











# STATE OF NEW HAMPSHIRE



## ORGANIZATION DAY

*December 4, 2002*

The Assistant Clerk of the Senate, Tammy L. Wright, called the Senate to order at 10:00 a.m.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer. Good Morning and congratulations. You have each been chosen to sit in one of the twenty-four chairs in this historic room. The chair behind you right now is a very special seat. Take good care of it over these next two years and remember the two things that makes your chair special – whose it is and who has been in it before you. These seats are on temporary loan to you. They are the property of the people of New Hampshire – those who voted for you, and just as importantly, those who did not. Remember that. Additionally, you are only the most recent in a long and distinguished line of others who have been allowed to sit in these seats before you and to make choices for us. Others will follow you. Remember that too, and may what you do here be a very strong link in that important chain. And now, you have to make a choice. You'll have to make this same choice every time you come into this chamber and sit in the chair. Will you use your position, your seat, to exercise power or authority? There is a big difference between the two and you have the freedom to go either way. Power is something you take and use. Authority is something you permit to take you and use you. Donald Trump has power. Mother Teresa has authority, so we had better pray.

Let us pray:

*Good God, You are the source of all authority and the power that trumps all others. Guide, protect, enlighten and inspire these twenty-four men and women with all the resources they will need to sit well in these very special seats.*

*Amen*

Senator Roberge, Dean of the Senate, led the Pledge of Allegiance.

The Assistant Clerk of the Senate, Tammy L. Wright, called the Roll of the Senate for attendance.

There were 24 members present.

**Recess.**

**Out of recess.**

ACTING CLERK TAMMY WRIGHT: C. Jeanne Shaheen, Governor of the state of New Hampshire, having come into the Senate Chamber will now

subscribe the oaths of office and witness the signing of the oath by each individual Senator and verify that these are duly qualified as Senators, agreeably to the provision of the constitution.

### OATH OF OFFICE FOR SENATORS

At this time, on the first Wednesday in December, in the year of our Lord, Two Thousand and Two, being the day prescribed by the constitution for the legislature of New Hampshire to assemble and the honorable C. Jeanne Sheehan, Governor of the state of New Hampshire, accompanied by the honorable Governors Council, having come into the Senate Chamber, will now subscribe the oaths of office and witness the signing of the oath by each individual Senator, and verify that these are duly qualified as Senators agreeably to the provisions of the constitution: C. Jeanne Sheehan, Governor of the state of New Hampshire.

On behalf of the Executive Council, I would like to swear in the honorable Senate:

GOVERNOR C. JEANNE SHAHEEN: Good morning everyone and thank you. This will be my last official act as Governor before this Senate, so I do want to thank all of you, particularly those of you who I have had the opportunity to serve with over the last six years. I have enjoyed serving with you and I have enjoyed the work that we have accomplished for the citizens of New Hampshire. I wish you good luck in the coming two years in your efforts to continue to serve the people of this state.

Now if you would raise your hand and repeat after me:

I, (state your name and where you are from) do solemnly affirm that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitutions thereof. This I do under the pains and penalties of perjury. I, (state your name) do solemnly and sincerely swear and affirm, that I will faithfully and impartially, discharge and perform the duties incumbent on me as state Senator according to the best of my abilities, agreeably to the rules and regulations of this constitution and the laws of state of New Hampshire, so help me God.

Congratulations.

District No. 1	John T. Gallus
District No. 2	Carl R. Johnson
District No. 3	Joseph D. Kenney
District No. 4	Robert K. Boyce
District No. 5	Clifton C. Below
District No. 6	Richard P. Green
District No. 7	Robert B. Flanders
District No. 8	Bob Odell
District No. 9	Sheila Roberge
District No. 10	Thomas R. Eaton
District No. 11	Andrew R. Peterson
District No. 12	Jane E. O'Hearn
District No. 13	Joseph A. Foster
District No. 14	Robert E. Clegg, Jr.
District No. 15	Sylvia B. Larsen
District No. 16	Theodore L. Gatsas

District No. 17	John S. Barnes, Jr.
District No. 18	André A. Martel
District No. 19	Frank V. Sapareto
District No. 20	Lou D'Allesandro
District No. 21	Iris W. Estabrook
District No. 22	Charles W. Morse
District No. 23	Russell E. Prescott
District No. 24	Burton J. Cohen

### NOMINATIONS

Nominations for Temporary Presiding Officer.

Senator Roberge nominated the Honorable Ned Gordon for Temporary Presiding Officer.

Senator Foster seconded the nomination.

SENATOR FOSTER: I am most pleased and honored to second the nomination of the Honorable Ned Gordon with great distinction for being here as the Temporary Presiding Officer.

No further nominations.

Senator Flanders moved that the nominations for Temporary Presiding Officer be closed and that one ballot be cast for the Honorable Ned Gordon.

**Adopted.**

**The Honorable Ned Gordon is elected Temporary Presiding Officer.**

The Honorable Tammy L. Wright, Acting Clerk, requested that Senators' Clegg and Larsen escorted the Temporary Presiding Officer, the Honorable Ned Gordon to the rostrum.

THE HONORABLE NED GORDON: Thank you for this honor.

The Honorable Ned Gordon, Temporary Presiding Officer, asked for nominations for the President of the Senate.

Senator Johnson nominated Senator Thomas R. Eaton for the President of the Senate.

SENATOR JOHNSON: Mr. Chairman, it gives me great pleasure to nominate Senator Thomas Eaton for the position of Senate President.

Senator Larsen seconded the nomination.

SENATOR LARSEN: It is my honor to second the nomination of Tom Eaton for the Senate President and wish him all the best.

No further nominations.

Senator Flanders moved that nominations for President of the Senate be closed and that one ballot be cast for Senator Thomas R. Eaton.

**Adopted.**

**Senator Thomas R. Eaton is elected the President of the Senate.**

The Honorable Ned Gordon, Temporary Presiding Officer, requested that Senators' Clegg and Larsen escort the President of the Senate, Senator Thomas R. Eaton, to the rostrum.

PRESIDENT OF THE SENATE, THOMAS R. EATON: Thank you all very much. For those of you who have known me for the past several years, you know that I am not one to stand up and really give speeches, so you won't really be surprised that it is extremely difficult for me to express just how grateful I am to all of you for the honor and trust that you have bestowed upon me. I promise that I won't let you down. The past month has been a real whirlwind. I have learned that in my short term in politics that doors can sometimes swing open rather unexpectedly, creating opportunities that you never considered. So here we are today; ready to take the challenges that we were elected to solve, including the budget and the state education funding issues. I look forward to working with all of you in a bipartisan manner to tackle these issues. Together we will put teamwork above politics and work with governor-elect Benson and with Speaker Chandler in a pro-New Hampshire agenda. I am also thankful to be able to share this time with all of my family here. I will be introducing them and we will have other introductions later on in the program here. Also, I am glad to share it with all of you, my colleagues. First of all, I would like to thank Senator Gordon, a special friend for coming down today. We have here, my mother Mary Louise Eaton, a very special friend, Bonnie Moore. I guess we will start with the oldest brother: We will go: Charlie from New York; Mike, and Dean who is sitting down; Stacy right over here. My brother Dan is in the House next door being sworn in also. We also have my brother's wife, Diana who is a physician with the state of New Hampshire; Stacy's wife, Trisha Brooks, who is Executive Director of Healthy Kids, which some of you people do know; and Stacy and Trisha's children Jake and Rebecca. Also another a very good friend, retired from the State Police, Neal Scott. Thank you. I already have to apologize, you always tell your kids to be quiet. I forgot my son Tom. My daughter Kristin could not be here today. She lives in Los Angeles.

To my fellow Senators, I say welcome back. To our 11 new Senators I say welcome aboard. As your Senate President, I am looking forward to working with each one of you and something tells me that this is going to be a very interesting couple of years. Thank you.

Senator Boyce offered the following Resolution:

### RESOLUTION

RESOLVED, that the rules of the 2001-2002 session be adopted as the rules of the 2003-2004 session, with the following date changes and be it further RESOLVED, that these rules may be amended by the majority vote for the next two legislative days.

17-A (a) The Office of Legislative Services shall not draft a Senate Bill or Joint Resolution, other than the general appropriations (budget) bill or the capital budget bill, unless a request by a member for drafting with complete information has been received not later than 5:00 p.m. Friday, December 13, 2002.

**Senator Estabrook moved to divide the question.**

SENATOR ESTABROOK: I would like to ask that we divide the question and separate out the provision related to the introduction of LSR's, the deadline for which is being proposed to be moved up by a week, so that we might discuss that separately. The section that I am referring to that I would like to divide out is provision 17-A (a) The Office of Legislative Services shall not draft a Senate Bill or Joint Resolution, other

than the general appropriations (budget) bill or the capital budget bill, unless a request by a member for drafting with complete information has been received not later than 5:00 p.m. Friday, December 13, 2002. I would like a separate vote on that provision as opposed to the remainder of the rules.

PRESIDENT EATON (In the Chair): The question is to vote to divide the question into two parts. One that the rules be adopted and opened for the next two legislative days. The 17-A (a) which has to do with the date of Friday, December 13 for Legislative Services for the closing of bills.

SENATOR BELOW: Is it correct that the current rules would have a week later date for that provision? So that if we just adopted the first part of the question, we would adopt a deadline that is a week later than the proposed rule here today? I think that it is an interesting point because traditionally the Senate has given itself a little more leeway for initiating legislation and it would seem to me that would be a reasonable thing to do to stick with the current deadline that allows an additional week for Senators to initiate legislation. Thank you.

SENATOR ESTABROOK: I would like to speak to that also. I would just like to explain why I made that motion. As you said yourself, in your introductory remarks that the "past month has been a whirlwind". For the 11 new members of the Senate, I think that is especially true also. Also given that we are not yet aware of what our committee assignments are, to try and pull together all of our legislative requests in the next week is going to be extremely difficult. I would just ask the members to consider that in casting their vote.

**The Chair ruled that the question is divisible.**

SENATOR D'ALLESANDRO: Mr. President, as I understood your answer to Senator Below's question, if we adopt the first part, then we have adopted the rules that say that the filing period date will be extended until December 20? So if we are voting on that, as the A part of the resolution, it should be clear to us that if we accept that we are extending the date...we are keeping the date of December 20 as our final date for filing. Am I correct in assuming that? Is that the parliamentary situation?

PRESIDENT EATON (In the Chair): I believe so. Yes.

SENATOR D'ALLESANDRO: Thank you, Mr. President.

PRESIDENT EATON (In the Chair): The question is on the second part of the resolution which is 17-A (a). The Office of Legislative Services shall not draft a Senate Bill or Joint Resolution, other than the general appropriations (budget) bill or the capital budget bill, unless a request by a member for drafting with complete information has been received not later than 5:00 p.m. Friday, December 13, 2002.

**The question is on the adoption of Rule 17-A (a) date change.**

**Motion failed.**

SENATOR FLANDERS: Mr. President, I am not sure what we just did. Please explain?

PRESIDENT EATON (In the Chair): We voted on the new deadline and the motion failed. We will still have the deadline of Friday, December 20, 2002.

**Recess.**

**Out of recess.**

PRESIDENT EATON (In the Chair): So the ruling is that we have adopted the rules and the dates for LSR's to be December 20, 2002.

SENATOR D'ALLESANDRO: Thank you, Mr. President.

**The question is on adopting the 2001-2002 Senate Rules.**

**Adopted.**

**NOMINATIONS**

Nominations for Clerk of the Senate.

Senator O'Hearn placed the name of Steven J. Winter in nomination for Clerk of the Senate.

SENATOR O'HEARN: It is with distinct honor that I would like to nominate Steve Winter for Senate Clerk.

Senator D'Allesandro seconded the nomination.

No further nominations.

Senator Prescott moved that the nominations be closed and that one ballot be cast for Steven J. Winter for Clerk of the Senate.

**Adopted.**

**Steven J. Winter is elected Clerk of the New Hampshire Senate.**

The Senate President requested that Senator Gallus escort the Clerk of the Senate, Steven J. Winter to the rostrum.

Nominations for Assistant Clerk of the Senate.

Senator Larsen moved to place the name of Tammy L. Wright in nomination for Assistant Clerk of the Senate.

SENATOR LARSEN: I rise to nominate Tammy Wright as Assistant Clerk of the Senate. Tammy is a resident of Concord. She has worked in the Senate since 1989 serving as Office Aide, Calendar Clerk and Assistant Clerk. In her 13 years here in the Senate she has served us well, I know that she will serve us well as Assistant Clerk again. Thank you.

Senator Johnson seconded the nomination.

No further nominations.

Senator Gatsas moved that the nominations be closed and that one ballot be cast for Tammy L. Wright for Assistant Clerk of Senate.

**Adopted.**

**Tammy L. Wright is elected Assistant Clerk of the Senate.**

Nominations for Senate Sergeant-At-Arms.

Senator Flanders moved that the name of Henry W. Wilson be placed in nomination for Sergeant-At-Arms.

SENATOR FLANDERS: It is with great pleasure that I nominate Henry Wilson to the position of Sergeant-At-Arms.

Senator Below seconded the nomination.

SENATOR BELOW: It is my honor and pleasure to second the nomination of Henry Wilson to Sergeant-At-Arms of the state Senate. Thank you.



Further nominations.

Senator Prescott moved that the nominations be closed and that one ballot be cast for Henry W. Wilson for Sergeant-At-Arms

**Adopted.**

**Henry W. Wilson is elected Sergeant-At-Arms.**

The President administered the oaths of office to the Senate Clerk, Assistant Clerk of the Senate, and the Sergeant-At-Arms.

PRESIDENT EATON (In the Chair): I (state your name), do solemnly swear that I will bear faith and true allegiance to the United States of America and to the state of New Hampshire and will support the constitution thereof, so help me God. I (state your name) do solemnly and sincerely swear and affirm, that I will faithfully and impartially discharge and perform all the duties incumbent upon me as (state your role) according to the best of my abilities, agreeably to the rules and regulations of this constitution and the laws of New Hampshire, so help me God.

### RESOLUTION

Senator Boyce offered the following Resolution:

RESOLVED, that the Secretary of State be requested to furnish the Senate with the official return of votes from the various senatorial districts.

**Adopted.**

SENATOR SAPARETO: Mr. President, at this point, I understand that we have adopted the rules from the 2001-2002 session for the 2003-2004 session?

PRESIDENT EATON (In the Chair): We have. Yes.

SENATOR SAPARETO: Then Mr. President, at this point, isn't it appropriate now that we should also be electing a doorkeeper as per those rules?

PRESIDENT EATON (In the Chair): We are going to refrain from that until the next session.

SENATOR SAPARETO: Thank you.

PRESIDENT EATON (In the Chair): I will explain that the person that would be here is in Washington right now.

The Honorable William M. Gardner, Secretary of State, presented the return of votes for state Senators from the various senatorial districts, as returned to the Secretary of State's Office from the general election held on November 5, 2002.

THE HONORABLE WILLIAM GARDNER: The constitution requires that the Secretary of State present before you, the votes that were cast by the electors in the various cities and towns across our state. I am about to read to you those votes that were cast on November 5, 2002.

### COMMITTEE REPORT

The selected committee to whom was referred the various returns of votes for state Senators from the several districts, having attended to their duties and having examined the returns made to the Secretary of State and the records in the office of said Secretary, report that they filed the state of the vote returned from the several districts as follows:

**First District**

John Gallus, r	12,140
Jerry Sorluccho, d	<u>5,733</u>
Plurality for Gallus	6,407

**Second District**

Carl Johnson, r	11,041
Sid Lovett, d	<u>8,027</u>
Plurality for Johnson	3,014

**Third District**

Joseph D. Kenney, r	12,837
William T. Riley, d	<u>6,648</u>
Plurality for Kenney	6,189

**Fourth District**

Robert K. Boyce, r	10,714
Beth Reeve Arsenault, d	<u>7,646</u>
Plurality for Boyce	3,068

**Fifth District**

Clifton Below, d	10,768
Nancy Merrill, r	<u>9,498</u>
Plurality for Below	1,270

**Sixth District**

Richard Green, r	9,603
Caroline McCarley, d	<u>7,872</u>
Plurality for Green	1,731

**Seventh District**

Robert B. Flanders, r	10,610
Dennis Kalob, d	<u>8,355</u>
Plurality for Flanders	2,255

**Eighth District**

Bob Odell, r	9,170
George F. Disnard, d	<u>8,494</u>
Plurality for Odell	676

**Ninth District**

Sheila Roberge, r	13,830
Kathleen McLaughlin Peterson, d	<u>6,931</u>
Plurality for Roberge	6,899

**Tenth District**

Tom Eaton, r&d	15,074
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**Eleventh District**

Andrew R. Peterson, r	11,397
Roger Wellington, d	<u>7,606</u>
Plurality for Peterson	3,791

**Twelfth District**

Jane O'Hearn, r	10,863
Lucien Bergeron d	<u>6,805</u>
Plurality for O'Hearn	4,508

**Thirteenth District**

Joseph A. Foster, d	6,647
Bea Francoeur, r	<u>6,544</u>
Plurality for Foster	103

**Fourteenth District**

Robert Clegg, Jr., r	10,401
Jean Susan Serino, d	<u>5,416</u>
Plurality for Clegg, Jr.	4,985

**Fifteenth District**

Sylvia B. Larsen, d	11,165
Kristie S. MacNeil, r	<u>7,529</u>
Plurality for Larsen	3,636

**Sixteenth District**

Theodore Gatsas, r	12,734
Peter E. Hutchins, d	<u>7,171</u>
Plurality for Gatsas	5,563

**Seventeenth District**

John S. Barnes, Jr., r	10,845
Mary Brown, d	<u>6,777</u>
Plurality for Barnes, Jr.	4,068

**Eighteenth District**

Andre Martel, r	8,049
Dave Gelinias, d	<u>7,180</u>
Plurality for Martel	869

**Nineteenth District**

Frank V. Sapareto, r	10,503
R. Christopher Reisdorf, d	<u>4,780</u>
Plurality for Sapareto	5,723

**Twentieth District**

Lou D'Allesandro, d	7,475
Joseph Levasseur, r	<u>6,569</u>
Plurality for D'Allesandro	906

**Twenty-First District**

Iris Estabrook, d	9,475
Jim Boynton, r	<u>8,009</u>
Plurality for Estabrook	1,466

**Twenty-Second District**

Chuck Morse, r	11,177
Norman L. MacAskill, d	<u>5,532</u>
Plurality for Morse	5,645

**Twenty-Third District**

Russell Prescott, r	10,659
Maggie Hassan, d	<u>9,067</u>
Plurality for Prescott	1,592

**Twenty-Fourth District**

Burton J. Cohen, d	12,947
Pamela Saia, r	<u>10,163</u>
Plurality for Cohen	2,784

**RESOLUTION**

Senator Cohen offered the following Resolution:

RESOLVED, that the returns from the several senatorial districts be referred to a select committee of three with instructions to examine and count the same and report to the Senate where any vacancies or contest exists and if so, in what senatorial district.

**Adopted.**

The Chair appointed Senators: Clegg, Larsen and Gallus to examine the vote totals.

**Recess.**

**Out of recess.**

**COMMITTEE REPORT**

Senator Larsen reported that the select committee to whom was referred the various return of votes for state Senators from the several districts, having attended to their duties and having examined the returns made to the Secretary of State and the records in the office of said Secretary, report that they find the state of the vote returned from the several districts to be correct.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives has organized and has elected its officers:

**Speaker of the House: Representative Gene G. Chandler.**

**Clerk of the House: Karen O. Wadsworth.**

**Sergeant-At-Arms: Deborah Nielsen.**

**RESOLUTION**

Senator Barnes offered the following Resolution:

Salary and Mileage Payments to the Members of the Senate:

RESOLVED, that the salary of the members of the Senate be paid in one undivided sum as early as practical after the adoption of this Resolution, and be it further Resolved, that mileage of members of the Senate be paid every two weeks during this session.

**Adopted.**

### HOUSE MESSAGE

The House of Representatives is organized and ready to meet with the honorable Senate in Joint Convention for the purpose of electing a State Treasurer and a Secretary of State.

### RESOLUTION

Senator Clegg offered the following Resolution:

Let it be RESOLVED, to meet in Joint Convention for the purpose of electing the Secretary of State and State Treasurer.

**Adopted.**

**In recess for Joint Convention.**

**Out of recess.**

### INTRODUCTION OF GUESTS ANNOUNCEMENTS

### RESOLUTION

Senator Larsen moved that the Senate now adjourn from the early session and that the business of the late session be in order at the present time, and that when we adjourn we adjourn to Wednesday, January 8, 2003.

**Adopted.**

### LATE SESSION RESOLUTION

Senator Clegg moved that the Senate having organized and completed its business of the day that we now adjourn until Convening Day, Wednesday, January 8, 2003.

**Adopted.**

**Adjournment.**

### RULES OF THE SENATE

1. Determination of quorum; correction of Journal.
2. Members, decorum of.
3. Members, conduct when speaking.
4. Members not to speak more than twice.
5. President shall recognize whom.
6. Questions of order, appeal.
7. Member, absenting himself.
8. Motions, order of preference.
9. Questions postponed indefinitely; not acted upon in same biennium.
10. Questions, when divided.
11. Objections to reading paper, how determined.
12. Roll Call, everyone must vote.
13. Galleries, clearing of.
14. Reconsideration, motion for.
15. Petitions, introduction of.
16. Bills; shall be numbered and expressed clearly.
17. Bills, introduction of.

- 17-A (a) Bills, deadlines for drafting.
- 17-b Bills, deadlines for information.
- 17-c Final deadline.
- 18. Resolutions to be treated as bills.
- 19. Bills shall have three readings; progress of; time for second and third readings.
- 20. Bills, printing and distribution.
- 21. Bills amended only on second reading; filing of amendments.
- 22. Public hearings to be held and advertised.
- 23. Amended bills, printed distributed and disposed of.
- 24. Appropriating money, to whom referred.
- 25. President to sign bills, etc.
- 26. Committees, appointment of.
- 27. Standing Committees.
- 28. Messages sent to House.
- 29. Messages, when received.
- 30. Voting; division of Senate.
- 31. Visitors to Senate.
- 32. Hours of meeting.
- 33. Rules of Senate, how suspended.
- 34. Rules of Senate, how rescinded.
- 35. Committee of the whole.
- 36. President may name member to chair.
- 37. Senate staff; composition and duties.
- 38. Senate staff; days of employment.
- 39. Committees, reports and meetings.
- 40. Appeal, presiding officer ruling.
- 41. Motions, no substitution under color of amendment.
- 42. Conflict of interest.
- 43. Committee of Conference reports.
- 44. Personal privilege.
- 45. Requisition Approval Required.
- 46. Fiscal notes requirements.

### SENATE RULES

- 1. The President, having taken the chair, shall determine a quorum to be present. Any erroneous entry in the daily journal shall be corrected no later than the third succeeding legislative day, and the permanent journal corrected one week after the permanent journal copy is placed in the hands of the Senate.
- 2. No member shall hold conversation with another while a member is speaking in debate, or use electronic devices, including but not limited to personal computers, and telephonic devices, without leave of the Senate.
- 3. Every member, wishing to speak, shall address the President and when he has finished shall, if having risen to speak, then sit down.
- 4. No member shall speak more than twice on the same question on the same day without leave of the Senate.

5. More than one member rising to speak at the same time, the President shall decide who shall speak first.
6. If any member transgresses the rules of the Senate, the President shall, or any member may, call him to order; in which case the member so called to order shall immediately cease and desist, and the Senate, if appealed to, shall decide the case. But if there is no appeal, the decision of the President shall be conclusive.
7. No member shall absent himself without permission from the Senate.
8. When any question is under debate, no motion shall be received but first, to adjourn; second, to lay upon the table; third, for the previous question; fourth, to postpone to a certain day; fifth, to commit; sixth, to amend; and seventh, to postpone indefinitely; which several motions shall have precedence in the order in which they are so arranged. Motions to adjourn, to lay upon the table, for the previous question, and to take from the table shall be decided without debate. Motions to postpone to a certain day shall be debatable both as to time and subject matter. No motion to postpone indefinitely, to postpone to a certain day, or to commit, being decided, shall be in order at the same stage of the bill or resolution, until after adjournment.
9. A question which is postponed indefinitely shall not be acted upon during the biennium except whenever two-thirds of the whole number of elected Senators shall on division taken, vote in favor thereof. Any bill which is indefinitely postponed shall not be reintroduced under cover of an amendment to the general appropriations (budget) bill. No motion to suspend this rule shall be permitted.
10. Any member may call for a division of the question when the sense will admit it. Unless otherwise specifically provided for, a majority of those present and voting shall be required to pass any vote.
11. When the reading of a paper or document is objected to by a member, the question shall be determined by a vote of the Senate; and without debate.
12. When the nays and yeas have been moved by a member and duly seconded by another member, each member present shall declare his assent or dissent to the question, unless for special reason he be excused by the Senate. The names of the persons so making the motion and the second shall be recorded in the Journal. A member who is to be absent when the yeas and nays are required may pair his vote with another member, to be present or also to be absent, who intends to vote on the opposite side of the question. Pairs shall be permitted only if the yeas and nays are taken on such question. Both members shall file such pair in writing with the Clerk before the question is put. In all cases of pairing, the vote of neither member shall be counted in determining the result of the roll call; but the Clerk shall announce all pairs and enter them in the Journal. The President shall determine the order of the roll call. No member shall be required to vote in any case where he was not present when the question was put.
13. In case of any disturbance or disorderly conduct in the gallery, the President shall have the power to order the same to be cleared. The Chairman of the Committee of the Whole may restrict attendance to the duly elected Senators.

14. No vote shall be reconsidered, unless the motion for reconsideration be made by a member who voted with the prevailing side, nor unless the notice of such motion be given to the Senate in open session prior to adjournment on the same day on which the vote as passed, or on the next day on which the Senate shall be in session within one half hour after the convening of the early session, and any such notice of reconsideration shall be effective for three legislative days only and thereafter shall be null and void.
- 14 (a) Reconsideration of any bills subject to a transfer date established by joint rules must be acted on or before the joint rule deadline, and thereafter shall be null and void.
15. Before any petition shall be received and read, a brief statement of the contents thereof shall be made by the member introducing the same.
16. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced in the Senate, shall be endorsed with the name of the Senator presenting them, and with the subject matter of the same. Every bill shall be marked on the first page "Senate Bill" and numbered serially; every joint resolution shall be marked "Senate Joint Resolution" and numbered serially; every concurrent resolution proposing a constitutional amendment shall be marked "Concurrent Resolution Proposing a Constitutional Amendment" and numbered serially; and every other concurrent resolution shall be marked "Senate Concurrent Resolution" and numbered serially, as each bill or resolution is introduced into the Senate.
17. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced into the Senate shall be delivered or caused to be delivered to the Office of Legislative Services, which in turn will submit it to the sponsor for his signature, and then to the Clerk by Legislative Services. If requested by the sponsor, a proposed bill, resolution or petition shall not be made public, except by the sponsor, until signed by the sponsor. During any adjournment the President may receive bills and resolutions for printing and for reference to committee, provided that no bill shall have a public hearing until it is formally introduced into the Senate printed and available for distribution. The President shall take up all bills and resolutions for introduction at the early session.
- 17-A (a) The Office of Legislative Services shall not draft a Senate bill or joint resolution, other than the general appropriations (budget) bill or the capital budget bill, unless a request by a member for drafting with complete information has been received not later than **3:00 p.m. on Friday, December 20, 2002.**
- (b) Every Senate bill and joint resolution, except the general appropriations (budget) bill or the capital budget bill, must be **signed off in Legislative Services by 12:00 p.m., on Friday, January 17, 2003.**
- (c) Notwithstanding the provisions of 17 (a), (b), and (c), a Senate bill, Senate joint resolutions, or Senate concurrent resolution may be accepted by Legislative Services for drafting and introduced into the Senate at any time prior to the deadline established by Joint Rules for the transfer of bills out of the first body if approved by either a majority of the Senate Rules Committee or a two-thirds vote on the floor.



(d) No bill the subject matter of which has been indefinitely postponed or made inexpedient to legislate in the Senate in the first-year session shall be admitted into the second-year session whether as a bill, an amendment, a committee of conference report or in any other manner;

(e) Legislation returned from the non-originating body, with an amendment, shall not be rereferred to Committee but shall have one of the following recommendations: Concur, Nonconcur, Nonconcur and Request a Committee of Conference.

#### 17-B Committees of Conference.

(a) Whenever there be any disagreement between the Senate and the House on the content of any bill or resolution, and whenever both bodies, voting separately, have agreed to establish a committee of conference, the President of the Senate shall appoint three members to the Senate conference committee on the bill and the Speaker of the House shall appoint four members to the House conference committee. Exceptions: (1) the House committee of conference on the operating budget shall consist of five members; (2) the number of the members of the committees of conference on any bill may increase or decrease if the President and the Speaker both agree. The two committees of conference on a bill shall meet jointly but vote separately while in conference. A unanimous vote by both committees of conference shall be necessary for an agreed report to the Senate and the House by the committees of conference.

(b) The first-named person from the body where the bill or resolution in disagreement originated shall have the authority to call the time and place for the first meeting of the committees of conference on said bill.

(c) The first-named person on a committee of conference shall be the chairman of that conference. The chairman of the committee of conference of the body where the bill or resolution in disagreement originated shall chair the joint meeting of the committees of conference.

(d) No action shall be taken in either body on any committee of conference report earlier than some subsequent day, after the report has been delivered to the seats or placed on a member's desk. A committee of conference may neither change the title of any bill submitted to it nor add amendments which are not germane to the subject matter of the bill as originally submitted to it.

(e) Conference Committees on Budget Bills. The report of each committee of conference on either the general appropriation bill, or the capital improvements bill shall be printed in the journal or a supplement thereto of the appropriate body before action on said report is taken on the floor. Non-germane amendments, sections and footnotes to such bills (except footnotes in explanation of the principal text of such bills or designating the use or restriction of any funds or portions thereof) are prohibited and shall not be allowed under any circumstances. Notwithstanding the general provisions of paragraph (h) of this section, the Conference Committee on general appropriations bill may propose new items for inclusion in said bill but no such item may be so included unless and until it shall have been returned to both the Senate and the House and adopted in identical form by a majority vote in each body.

(f) When both committees of conference on a concurrent resolution proposing an amendment to the constitution have agreed, the committee of conference from the body which acceded to a request for committees of conference shall file its report with the clerk of that body who shall print it in full in the journal or supplement of that body. The report shall be made a special order of business at the late session of a subsequent day. After said report has been adopted by the first body, a message shall be transmitted to the second body which shall then act upon the report of its committee of conference.

(g) A sponsor of any bill or joint resolution referred to committees of conference shall, upon his request, be granted a hearing before said committees prior to action thereon.

(h) No member of a committee of conference shall sign any report that contains non-germane amendments or subject matter that has been indefinitely postponed in either body. For the purposes of this rule, a non-germane amendment would be any subject matter not contained in either the House or the Senate version of the bill.

18. All resolutions which may require the signature of the Governor shall be treated in the same manner as bills.
19. Every bill shall have three readings in the Senate previous to its passage. The first and second readings shall be by title only which may be accomplished by a conglomerate resolution, after which the bill shall be referred by the President to the appropriate committee and shall be printed as provided in Rule 20, unless otherwise ordered by the Senate. No bill after it has been read a second time shall have a third reading until after adjournment from the early session. The time assigned for the third reading of bills and resolutions shall be in the late session unless otherwise ordered by the Senate. The orders of the day for the reading of bills shall hold for every succeeding day until disposed of.
20. After every bill shall have been read a second time, and referred by the President to the appropriate committee, the Clerk shall procure a sufficient number of copies, printed on paper of uniform size, for the use of the legislature, and cause the same to be distributed to the members, and when printed the bill shall be immediately delivered to the committee to which it shall have been referred. Bills received from the House shall be printed at the same stage of their procedure unless they have been printed in the House and copies distributed in the Senate, in which case any amendment made by the House shall be duplicated and distributed in the Senate.
21. No amendment shall be made but upon the second reading of a bill; and all amendments to bills and resolutions shall be in writing, with the name of the Senator and the district he represents thereon. No amendment to any bill shall be proposed or allowed at any time or by any source, including a committee of conference, except it be germane. Amendments shall have been reviewed by the Office of Legislative Services for form, construction, statutory and chapter reference.
22. A hearing shall be held upon each bill referred to a committee, and notice of such hearing shall be advertised at least (present seven days) five days before hearing in the Senate Calendar. The Senate Calendar shall be available on the World Wide Web for viewing as soon as it has been released for printing.

(a) All bills in the possession of committees shall be reported out with one of the following recommendations: ought to pass, ought to pass with amendment, rerefer to committee, inexpedient to legislate, or refer for interim study. Refer for interim study shall be a committee report only in the second year.

(b) Any legislation creating a chapter study committee shall have membership limited to members of the General Court.

23. When a bill is reported favorably with an amendment, the report of the committee shall state the amendment, and then recite the section of the bill in full as amended. The amendment shall be printed in the calendar of the Journal on the date that the report is listed for action. If no action is taken on that day, then the amendment shall be printed on the day to which the bill has been referred. All bills reported shall be laid upon the table and shall not be finally acted upon until the following legislative day, and a list of such bills with the report thereon shall be published in the Journal for the day on which action shall be taken.
24. Every bill and joint resolution appropriating money, which has been referred to another committee and favorably accepted by the Senate, shall be committed to the Finance Committee for review. If any such bills have been referred jointly to the Finance Committee and another standing committee, the Finance Committee may report separately and a further public hearing may be held at the discretion of the Finance Committee. All bills appropriating money, which are referred directly to the Finance Committee shall have a hearing. Any bill which has been referred to another committee and favorably accepted by the Senate, which has an economic impact on the state may be referred to the Committee on Economic Development for review. The Committee on Economic Development may hold a further public hearing at the discretion of the Committee.
25. All warrants, subpoenas and other processes issued by order of the Senate shall be under the hand and seal of the President attested by the Clerk.
26. All committees of the Senate, including Senate members on committees of conference, shall consist of members of both parties as nearly equal as possible, provided that on all committees, both parties shall be represented. The President shall appoint the members of all committees, after consulting with the minority leader.
27. The standing committees of the Senate shall be as follows: The Committee on Finance, Committee on Capital Budget, Committee on Ways & Means, Committee on Banks, Committee on (present Economic Development) Energy and Economic Development, Committee on Education, Committee on Environment, Committee on Executive Departments & Administration, Committee on Wildlife & Recreation, Committee on Insurance, Committee on Internal Affairs, Committee on Interstate Cooperation, Committee on Judiciary, Committee on Public Affairs, Committee on Public Institutions Health & Human Services, Committee on Rules & Enrolled Bills, and the Committee on Transportation.
28. Messages shall be sent to the House of Representatives by the Clerk of the Senate.

29. Messages from the Governor or House of Representatives may be received at all times, except when the Senate is engaged in putting the question, in calling the yeas and nays, or in counting the ballots.
30. All questions shall be put by the President, and each member of the Senate shall signify his assent or dissent by answering yea or nay. If the President doubts, or a division is called for, the Senate shall divide. Those in the affirmative on the question shall first rise from their seats and stand until they be counted. The President shall rise and state the decision of the Senate.
31. No person except members of the executive, or members of the House of Representatives and its officers, shall be admitted to the floor of the Senate, except by the invitation of the President, or some member with his consent.
32. The Senate shall adjourn to meet on the subsequent legislative day for the early session at the time mentioned in the adjournment motion. The late session shall immediately follow the early session unless the Senate shall otherwise order.
33. No standing rule of the Senate shall be suspended unless two-thirds of the members present vote in favor thereof. This rule shall not apply to Senate Rule 9.
34. No rule shall be rescinded unless two days notice of the motion has been given and two-thirds of those present vote therefor.
35. The Senate may resolve itself into a Committee of the Whole at any time on motion made for that purpose; and in forming a Committee of the Whole, the President shall leave the chair, and appoint a chairperson to preside in committee.
36. The President when performing the duties of the Chair may, at any time, name any member to perform the duties of the Chair.
37. The staff of the Senate shall be comprised of a Clerk, an Assistant Clerk, a Sergeant-At-Arms, and a doorkeeper who are to be elected by the Senate, and such other personnel as the President shall appoint. The President shall define the duties of all members of the Senate staff which are not fixed by statute or otherwise ordered by the Senate.
38. Each member of the staff of the Senate shall be available on call to carry out the work of the Senate.
39. The committees shall promptly consider and report on all matters referred to them. The President may authorize such committees having a heavy load of investigation, redrafting, research or amendments to meet as needed on non-legislative days during the legislative session. The Clerk of the Senate shall prepare a list by number, title and sponsor of all Senate bills and resolutions in committee which have not been acted upon within one week before the deadline established for the transfer of bills and resolutions from the Senate to the House of Representatives, and he/she shall distribute this list to every member of the Senate as soon as it is prepared.
40. Any appeal from the ruling of the presiding officer shall be decided by majority vote of the members present and voting.
41. No new motion shall be admitted under color of amendment as a substitute for the motion under debate.

42. In all instances every member shall act in conformance with the duly adopted Ethical Guidelines and Opinions of the New Hampshire General Court.
43. Action on the floor of a report of the Committee on Finance or a Committee of Conference on either the general appropriations (budget) bill or the capital budget bill, shall not be taken by the Senate, until said report has been available from the Senate Clerk twenty-four hours in advance, in written form. Nongermane amendments and footnotes to such bills (except footnotes in explanation of the principal text of such bills or designating the use or restriction of any funds or portions thereof) are prohibited and shall not be allowed under any circumstances.
44. **PERSONAL PRIVILEGE:** A Senator may, as a matter of personal privilege, defend his/her position on a bill, his/her integrity, his/her record, or his/her conduct, against unfair or unwarranted criticism, or may speak of an issue which relates to his/her rights, privileges or conveniences as a Senator; provided, however, the matters raised under personal privilege shall not be subject to questioning, answer, or debate, by another Senator. Personal Privilege remarks may be included in the Daily Journal if requested by the Senator, and in the Permanent Journal by vote of the Senate. A Senator may speak on other matters of his/her choosing and in such cases may be subject to questioning and/or answer according to the Rules of the Senate.
45. No officer or employee of the Senate during the session or any adjournment thereof shall purchase or contract for the purchase, pay or promise to pay any sum of money on behalf of the Senate or issue any requisition or manifest without the approval of the Senate President.
46. If a drafting request for a bill or resolution has been filed with the office of Legislative Services requiring a fiscal note as provided in RSA 14:44-47, the substance or a draft of the proposal may be provided to the legislative budget assistant for preparation of the required fiscal note without the specific consent of the sponsor of the proposal, provided that the identity of the sponsor shall not be disclosed.

### **2003-2004 COMMITTEE ASSIGNMENTS**

#### **BANKS - SH 103**

Sen. Flanders, Chairman  
Sen. Peterson, Vice Chairman  
Sen. Barnes  
Sen. Foster  
Sen. Odell

#### **CAPITAL BUDGET - SH 103**

Sen. Clegg, Chairman  
Sen. D'Allesandro, Vice Chairman  
Sen. Boyce  
Sen. Johnson  
Sen. Morse

**EDUCATION - SH 105-A**

Sen. O'Hearn, Chairman  
Sen. Johnson, Vice Chairman  
Sen. Foster  
Sen. Green  
Sen. Larsen

**ENERGY & ECONOMIC DEVELOPMENT - LOB 102**

Sen. Odell, Chairman  
Sen. Below, Vice Chairman  
Sen. Gallus  
Sen. Gatsas  
Sen. Prescott

**ENVIRONMENT - LOB 104**

Sen. Johnson, Chairman  
Sen. Cohen, Vice Chairman  
Sen. Barnes  
Sen. Below  
Sen. Prescott

**EXECUTIVE DEPARTMENTS & ADMINISTRATION - LOB 102**

Sen. Prescott, Chairman  
Sen. Cohen, Vice Chairman  
Sen. Estabrook  
Sen. Kenney  
Sen. Peterson

**FINANCE - SH 103**

Sen. Green, Chairman  
Sen. Boyce, Vice Chairman  
Sen. Below  
Sen. D'Allesandro  
Sen. Eaton  
Sen. Gatsas  
Sen. Odell

**INSURANCE - LOB 101**

Sen. Flanders, Chairman  
Sen. Prescott, Vice Chairman  
Sen. Cohen  
Sen. Martel  
Sen. Roberge

**INTERNAL AFFAIRS - LOB 103**

Sen. Boyce, Chairman  
Sen. Flanders, Vice Chairman  
Sen. Kenney  
Sen. Larsen  
Sen. O'Hearn

**INTERSTATE COOPERATION - LOB 101**

Sen. Gatsas, Chairman  
Sen. Estabrook, Vice Chairman  
Sen. Clegg  
Sen. Johnson  
Sen. Sapareto

**JUDICIARY - SH 105-A**

Sen. Peterson, Chairman  
Sen. Foster, Vice Chairman  
Sen. Clegg  
Sen. Roberge  
Sen. Sapareto

**PUBLIC AFFAIRS - SH 105-A**

Sen. Roberge, Chairman  
Sen. Larsen, Vice Chairman  
Sen. Barnes  
Sen. Green  
Sen. Morse

**PUBLIC INSTITUTIONS, HEALTH & HUMAN SERVICES - LOB 101**

Sen. Martel, Chairman  
Sen. Boyce, Vice Chairman  
Sen. Estabrook  
Sen. Kenney  
Sen. O'Hearn

**RULES & ENROLLED BILLS - SH 105-A**

Sen. Eaton, Chairman  
Sen. Green, Vice Chairman  
Sen. Clegg  
Sen. D'Allesandro  
Sen. Larsen

**TRANSPORTATION - LOB 104**

Sen. Kenney, Chairman  
Sen. Martel, Vice Chairman  
Sen. Below  
Sen. Flanders  
Sen. Morse

**WAYS & MEANS - SH 103**

Sen. D'Allesandro, Chairman  
Sen. Clegg, Vice Chairman  
Sen. Boyce  
Sen. Gallus  
Sen. Odell

**WILDLIFE & RECREATION - LOB 104**

Sen. Gallus, Chairman  
Sen. Roberge, Vice Chairman  
Sen. Cohen  
Sen. Gatsas  
Sen. Sapareto

*January 8, 2003*

### **CONVENING DAY**

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

This morning you and your colleagues on the other side of this wall begin the great legislative adventure of leading us. You have been appointed to the unending task of determining what we need, frequently as opposed to what we think we want from you. I don't envy you, but I do admire you. As you start out, now, four things: In this messy and sometimes heated business of governing, struggle to treat one another, and us, with gentleness, respect and dignity, for how effective you are at that will determine your legacy as much, and probably more, as how you vote here. Second, it is vital for you to find the time to think and read and be quiet, for wisdom seeps in slowly. Third, never let your party become more important to you than your constituents, for you are everybody's senator. And finally, beware of believing what you read about yourself in the newspapers, whether negative or positive, for you are never that bad, or that good.

*Here we are, Lord – Senators, staff members, lobbyists, members of the media, school children and people who have just come to watch. As we all fasten our seat belts and get ready for this beginning, we ask You to make our leaders firm, flexible, wise, open, smart, humble and humorous. That, at the end of the day, what You have in mind is what they come to decide.*

*Amen*

Senator Gallus led the Pledge of Allegiance.

### **INTRODUCTION OF STAFF**

#### **PRESIDENT'S STAFF**

Amy Ireland Bourgault, Chief of Staff

Donna L. Morin, Executive Assistant

Nancy L. Nolin, Secretary

Carole A. Paling, Special Assistant

Franklin G. Torr, Budget Director to the Senate President

#### **LEGAL COUNSEL**

Richard J. Lehmann

#### **REPUBLICAN LEADERSHIP STAFF**

Jay W. Flanders, Majority Policy Director

#### **MINORITY LEADERSHIP STAFF**

Margaret A. Fitz, Secretary

Marlene D. Taylor, Executive Secretary

#### **COMMUNICATIONS DIRECTOR**

Deborah A. Bradley

#### **SENATE CLERK'S STAFF**

Ann Marie Daniels, Calendar Clerk

Edward R. Hebert, Status Information Technician

Brenda L. Mento, Journal Clerk

Malcolm A. Richards, Senate Recorder



**LEGISLATIVE AIDES**

Susan F. Duncan, Senior Legislative Aide  
 Joshua R. Chamberlain  
 Angela J. Spradling  
 Kristy A. Stuart

**COMMITTEE SECRETARIES**

Livia Acdan  
 Susan A. Bridge  
 L. Gail Brown  
 Carlene C. Cayes  
 Merideth A. Chandler  
 Michelle L. Doucette  
 Gloria C. Lamoureux  
 Pamela J. Manocchi

**SENATE RESEARCH**

June C. Goulson, Director  
 Elaine D. Rapp, Senior Research Assistant  
 Diana M. Ferguson, Research Assistant  
 Theresa D. Neves, Administrative Research Assistant

**CORRESPONDANCE SECERETARY**

Meredith L. Warren

**SENATE INTERNS**

Emily Cole  
 Dan Dussault  
 Melissa Lawler  
 Beau Robinson

## **INTRODUCTION OF GUESTS NOMINATIONS**

Nominations for Senate Doorkeeper.

Senator Flanders moved that the name of John J. Byrnes, Sr., be placed in nomination for Senate Doorkeeper.

Senator O'Hearn seconded the motion.

Further nominations.

Senator Flanders moved that the nominations be closed and that one ballot be cast for John J. Byrnes, Sr., for Senate Doorkeeper.

**Adopted.**

**John J. Byrnes, Sr., is elected Senate Doorkeeper.**

Senator Gallus escorted John J. Byrnes, Sr., to the rostrum.

The President administered the oath of office to the Senate Doorkeeper.

JOHN J. BYRNES, SR.: I, John J. Byrnes, Sr., do solemnly swear that I will bear faith and true allegiance to the United States of America and to the state of New Hampshire and will support the constitution thereof, so help me God. I, John J. Byrnes, Sr., do solemnly and sincerely swear and affirm, that I will faithfully and impartially discharge and perform all the duties incumbent upon me as Senate Doorkeeper, according to the best of my abilities, agreeably to the rules and regulations of this constitution and the laws of New Hampshire so help me God.

### HOUSE MESSAGE

The House of Representatives is ready to meet in Joint Session for the purpose of canvassing the votes for Governor and Executive Council and for taking of the oath for the State Treasurer.

### RESOLUTION

Senator Johnson moved that the Senate be in Joint Convention for the purpose of canvassing the votes for Governor and Executive Council and the swearing in of the State Treasurer.

**Adopted.**

**In recess for Joint Convention.**

**Out of recess.**

### SENATE RULES

Senator Green moved that the Senate adopt the Senate Rules as amended and approved by the Committee on Rules and Enrolled Bills on January 2, 2003.

Senator Clegg moved that Senate Rule 14 be amended to read as follows:

*No vote shall be reconsidered, unless the motion for reconsideration be made by a member who voted with the prevailing side. The notice of such motion for reconsideration shall be given to the Senate in open session prior to adjournment on the same day on which the vote was passed, or to the clerk within 2 working business days of the vote. Any such notice of reconsideration shall be effective for three legislative days only and thereafter shall be null and void.* Reconsideration of any bills subject to a transfer date established by ~~Senate joint~~ rules must be acted **upon** on or before the ~~Senate joint~~ rule deadline, and thereafter shall be null and void.

and that Senate Rule 18 (c) be amended to read as follows:

(c) Filing period for legislation to be acted on in the second half of the biennium, **beginning** January 2004 ~~2002~~, will commence on **Monday, October 20, 2003** ~~April 16, 2001~~. The office of Legislative Services shall not draft a senate bill or joint resolution, unless a request by a member for drafting with complete information has been received not later than 3:00 p.m., **Friday, November 14, 2003** ~~April 20, 2001~~. Last day to sign-off legislation for the January 2004 ~~2002~~ session **shall be Friday December 19, 2003** ~~August 1, 2001~~, at 3:00 p.m.

**Amendment adopted.**

Senator Below moved that Senate Rule 33 be amended to read as follows:

No person except **members of the Senate and its officers, the Governor** ~~members of the executive~~, **Council members, the Secretary of State, the Treasurer,** or the Speaker of the House of Representatives and its officers and clerks, shall be admitted to the floor of the Senate while the Senate is in session, except by the invitation of the President, or some member with **the President's** ~~his~~ consent.

**Amendment adopted.**

**Question is on the adoption of the 2003-2004 Senate Rules.**

**Adopted.**

**INTRODUCTION OF SENATE BILLS**

Senator Clegg moved that in accordance with the list in the possession of the Senate Clerk, Senate Bills numbered 11 to 21 inclusive shall be by this resolution read a first and second time by the therein listed titles.

**Adopted.**

**First and Second Reading and Referral**

03-0120

**SB 11-FN**, establishing new special justice positions in the Manchester, Concord, and Nashua district courts. (O'Hearn, Dist 12; Larsen, Dist 15; Hager, Merr 40; Judiciary)

03-0157

**SB 12-FN-A-LOCAL**, establishing a property tax relief program for low income homeowners. (Peterson, Dist 11; Flanders, Dist 7; M. Carter, Hills 44; Ways and Means)

03-0272

**SB 13**, relative to judicially appointed officials. (Boyce, Dist 4; Soltani, Merr 37; Judiciary)

03-0273

**SB 14**, relative to vacancies in county offices. (Boyce, Dist 4; Flanders, Dist 7; Leber, Merr 35; E. Smith, Ches 26; Emerton, Hills 48; Internal Affairs)

03-0275

**SB 15**, relative to election day registration. (Boyce, Dist 4; Alger, Graf 14; Dudley, Graf 18; Internal Affairs)

03-0276

**SB 16-FN**, establishing a state employee recognition and award program. (Boyce, Dist 4; O'Hearn, Dist 12; McHugh, Hills 61; Executive Departments and Administration)

03-0277

**SB 17**, relative to incompatible offices. (Boyce, Dist 4; Bruno, Hills 45; Internal Affairs)

03-0289

**SB 18-FN**, relative to vehicle stops at railroad grade crossings. (Barnes, Dist 17; Bishop, Rock 74; D. Smith, Rock 74; Weldy, Rock 74; Transportation)

03-0293

**SB 19-FN**, relative to notification of groundwater contamination and repealing certain MTBE notification requirements for public water systems. (Prescott, Dist 23; Letourneau, Rock 77; Environment)

03-0454

**SB 20**, relative to the qualifications for the property tax exemption for the disabled. (Barnes, Dist 17; Bishop, Rock 74; D. Smith, Rock 74; Weldy, Rock 74; Public Affairs)

03-0603

**SB 21**, relative to health insurance riders. (Flanders, Dist 7; Prescott, Dist 23; Insurance)

## RESOLUTION

Senator Larsen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time and that when we adjourn, we adjourn to January 9, 2003 at 11:00 a.m.

**Adopted.**

SENATOR BARNES: Mr. President, I am sorry in rising, but I am sort of interested in what these bills are that we just voted on. Can we have a copy of what we just agreed to enroll?

PRESIDENT EATON (In the Chair): It is just the first batch of bills introduced.

SENATOR BARNES: But which are they and what are they?

PRESIDENT EATON (In the Chair): Senator Barnes, a list will be provided to you and to each and every member of the Senate.

## ANNOUNCEMENTS

SENATOR EATON (RULE #44): I would like to take just a minute here and make a few remarks of my own for the upcoming session. State Senators have gathered in this chamber continually since 1819 to carry out the people's business. While New Hampshire has changed dramatically since then, the dedication required to be a public servant certainly has not. Opening day at the state house is truly a celebration of public service for the 24 of us gathered in this chamber and the 400 of our colleagues across the way and for all of our great staff members who help keep this ship of state afloat. Opening day is also a time to reflect upon the people who have given us the opportunity to serve. I am doubly grateful today, not only to the people of Keene as well as the surrounding towns that comprise district 10, but to all of my fellow Senators for giving me the opportunity to serve as your president. I intend to work with each one of you in a non-partisan manner to respond to the challenges ahead with strong leadership and to manage the Senate with the honor and dignity it is traditionally known for. As Senate President, I look forward to working with our new governor to give him my support and to offer advice when appropriate. As part of our continuing conversations, Governor-elect Benson knows the state Senate is ready to roll up its sleeves and be a partner in dealing with the major issues of this coming session; however, he understands that the Senate will not serve as a rubber stamp for any one branch of government. In past years, we have often started off with the budget, with the premise of finding more revenue and also referred to as raising taxes, but the majority of our new Senators are a testament to the fact that we have a new and clear mandate from the voters. We must balance the next budget by living within our means and without a broad base tax. Over the next six months, the budget and education funding will become a political agenda like no time in the past. Knowing this, I have made it my goal as Senate President to have the best relations' possible with the House. Because Speaker Chandler feels likewise, we have agreed to hold Joint Finance and Ways and Means Committee hearings beginning in February. It simply makes no sense for the House and Senate to hold separate meetings as a way to gather the same information from our department heads. Government can and must be run more efficiently. I have every confidence that this state Senate can deliver on that challenge. I will be looking forward to our 11 new members bringing a renewed vision to the legislative process at the table. I will be expecting our 13 veterans to provide insight, expertise and guidance that brought us to this point today.

Our veteran Senators are lead by our Dean, Sheila Roberge. A Senator whose remarkable compassion for the welfare of animals is unequaled during her 20 years of service to district nine.

Our President Pro-Tem, Carl Johnson faced one of the most difficult challenges following last years redistricting. He traded district three for district two and somehow made it look easy. Carl applies the same tenacity when it comes to environmental issues.

Jack Barnes, a Senator whose loyalty to the Red Sox is only matched by his dedication to his district and his hometown of Raymond. I know that this is going to be a good year for both the Sox and Raymond.

We often think of Cliff Below as the numbers man. Someone, who not only enjoys figures, but has the ability to explain them to others. Our Senator from district five also enjoys a national reputation when it comes to issues such as energy and policy.

Fiscal conservative and court reformer are the way many people describe the Senator from district four, but let's also be thankful that Rob Boyce has made funding for brain injuries a personal priority for his tenure.

Senator Burt Cohen, his residents of the seacoast know him as a true environmentalist, but his contributions to the well-being of children may even be greater.

One of our distinguished colleagues from Manchester is known for having the Senate's loudest voice, but also its softest political touch. Teacher, coach, civic leader, Lou D'Allesandro is a dedicated lawmaker. He is also not afraid to let you know where the state stands on revenue issues and gaming.

Senator Bob Flanders continues his family tradition of public service. His grandfather William served in this chamber 82 years ago, and while William drove to Concord in a Model T, Bob tools around the same route in a red Thunderbird. Isn't it nice to know that Fords are still in the family?

Our veteran Senator from Manchester also finds time to serve as a Queen City Alderman. Ted Gatsas has one of the best financial minds in the State House. His talent for numbers also come in handy when Gander is on the track.

What Senator has kept the best interest of consumers in mind and has been devoted to healthy kids more than Sylvia Larsen? Let's always remember her hard work and commitment to the unique plan in making saving for college more affordable for generations to come.

Nashua's senior Senator has made her mark in education. A former teacher, Jane O'Hearn has turned her classroom smarts into a legislative drive to improve education for all students in New Hampshire.

Finally, Russell Prescott, the first Senator in the history of the New Hampshire state Senate to be granted a U.S. Patent. He is also dedicated to ridding MTBE from our water supplies.

From the Senate's perspective, we have 13 veterans and 11 freshmen who are truly as diverse as the 24 districts that they serve. I look forward to working with all of you on the challenges that we face in New Hampshire as our new session officially gets underway this morning. I can't promise that we will deal with such first in the nation inventions as the Segway this time around, but I can guarantee that the issues that we take up in 2003 will be landmarks for the future. In the

end, there is one major player we need to work with and that is the citizens that we serve. Their ideas and suggestions are invaluable in helping us stay balanced and energized. In closing, I want to say that I have been around long enough to understand that this State House won't consistently agree on everything, but it is compromise and patience that often saves the day. So whether this is your tenth term or your first, whether your politics run liberal, conservative or moderate, my wish is the same. Over the next six months, may all of our good intentions give way to even better results. Thank you.

### **LATE SESSION**

Senator Clegg moved that the Senate adjourn until Thursday, January 9, 2003 at 11:00 a.m.

**Adopted.**

**Adjournment.**

### **RULES OF THE SENATE**

1. Determination of quorum; correction of Journal.
2. Members, decorum of.
3. Members, conduct when speaking.
4. Members not to speak more than twice.
5. President shall recognize whom.
6. Questions of order, appeal.
7. Member, absenting himself.
8. Motions, order of preference.
9. Questions postponed indefinitely; not acted upon in same biennium.
10. Questions, when divided.
11. Objections to reading paper, how determined.
12. Roll Call, everyone must vote.
13. Galleries, clearing of.
14. Reconsideration, motion for.
15. Petitions, introduction of.
16. Bills; shall be numbered and expressed clearly.
17. Bills, introduction of.
18. Bills, drafting of.
19. Committees of Conference.
20. Resolutions to be treated as bills.
21. Bills shall have three readings; Progress of; time for second and third readings.
22. Bills, printing and distribution.
23. Bills amended only on second reading; filing of amendments.
24. Public hearings to be held and advertised.
25. Amended bills, printed distributed and disposed of.
26. Appropriating money, to whom referred.
27. President to sign bills, etc.
28. Committees, appointment of.
29. Standing Committees.
30. Messages sent to House.
31. Messages, when received.
32. Voting; division of Senate.
33. Visitors to Senate.
34. Hours of meeting.
35. Rules of Senate, how suspended.
36. Rules of Senate, how rescinded.
37. Committee of the whole.

38. President may name member to chair.
39. Senate staff; composition and duties.
40. Senate staff, days of employment.
41. Committees, reports and meetings.
42. Conflict of Interest.
43. Committee of Conference reports.
44. Personal privilege.
45. Appeal, presiding officer ruling.
46. Motions, no substitution under color of amendment.
47. Requisition Approval Required.

### SENATE RULES

1. The President, having taken the chair, shall determine a quorum to be present. Any erroneous entry in the daily journal shall be corrected no later than the third succeeding legislative day, and the permanent journal corrected within one week after the permanent journal copy is placed in the hands of the Senate.
2. No member shall hold conversation with another while a member is speaking in debate, or use electronic devices, including but not limited to personal computers, and telephonic devices, without leave of the Senate.
3. Every member, wishing to speak, shall notify the President. When the member is recognized to speak he shall rise and address the President, and when he has finished shall then sit down.
4. No member shall speak more than twice on the same question on the same day without leave of the Senate President.
5. More than one member wishing to speak at the same time, the President shall decide who shall speak first.
6. The President shall preserve decorum and order. If any member transgresses the rules of the Senate, the President shall, or any member may, call him to order in which case the member so called to order shall immediately cease and desist, and the Senate, if appealed to, shall decide the case. But if there is no appeal, the decision of the President shall be conclusive.
7. No member shall absent himself without permission from the Senate.
8. When any question is under debate, no motion shall be received but first, to adjourn; second, to lay upon the table; third, for the previous question; fourth, to postpone to a certain day; fifth, to commit; sixth, to amend; and seventh, to postpone indefinitely; which several motions shall have precedence in the order in which they are so arranged. Motions to adjourn, to lay upon the table, for the previous question, and to take from the table shall be decided without debate. Motions to postpone to a certain day shall be debatable both as to time and subject matter. No motion to postpone indefinitely, to postpone to a certain day, or to commit, being decided, shall be in order at the same stage of the bill or resolution, until after adjournment.
9. A question which is postponed indefinitely shall not be acted upon during the biennium except whenever two-thirds of the whole number of elected Senators shall on division taken, vote in favor thereof. Any bill which is indefinitely postponed shall not be reintroduced under cover of an amendment any bill, resolution, order, or committee of conference report. No motion to suspend this rule shall be permitted.

10. Any member may call for a division of the question when the sense will admit it. Unless otherwise specifically provided for, a majority of those present and voting shall be required to pass any vote.
11. When the reading of a paper or document is objected to by a member, the question shall be determined by a vote of the Senate; and without debate.
12. When the nays and yeas have been moved by a member and duly seconded by another member each member present shall declare his assent or dissent to the question, unless for special reason he be excused by the Senate. The names of the persons so making the motion and the second shall be recorded in the Journal. The President shall determine the order of the roll call. No member shall be required to vote in any case where he was not present when the question was put.
13. In case of any disturbance or disorderly conduct in the gallery, the President shall have the power to order the same to be cleared. The Chairman of the Committee of the Whole may restrict attendance to the duly elected Senators.
14. No vote shall be reconsidered, unless the motion for reconsideration be made by a member who voted with the prevailing side. The notice of such motion for reconsideration shall be given to the Senate in open session prior to adjournment on the same day on which the vote as passed, or to the clerk within 2 working business days of the vote. Any such notice of reconsideration shall be effective for three legislative days only and thereafter shall be null and void. Reconsideration of any bills subject to a transfer date established by Senate rules must be acted upon on or before the Senate rule deadline, and thereafter shall be null and void.
15. Before any petition shall be received and read, a brief statement of the contents thereof shall be made by the member introducing the same.
16. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced in the Senate, shall be endorsed with the name of the Senator presenting them, and with the subject matter of the same. Every bill shall be marked on the first page "Senate Bill" and numbered serially; every joint resolution shall be marked "Senate Joint Resolution" and numbered serially; every concurrent resolution proposing a constitutional amendment shall be marked "Concurrent Resolution Proposing a Constitutional Amendment" and numbered serially; and every other concurrent resolution shall be marked "Senate Concurrent Resolution" and numbered serially, as each bill or resolution is introduced into the Senate.
17. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced into the Senate shall be delivered or caused to be delivered to the Office of Legislative Services, which in turn will submit it to the sponsor for his signature, and then to the Clerk by Legislative Services. If requested by the sponsor, a proposed bill, resolution or petition shall not be made public, except by the sponsor, until signed by the sponsor. During any adjournment the President may receive bills and resolutions for printing and for reference to committee, provided that no bill shall have a public hearing until it is formally introduced into the Senate printed and available for distribution. The President shall take up all bills and resolutions for introduction at the early session.



## 18. Drafting of Bills

(a) The Office of Legislative Services shall not draft a Senate bill or resolution, other than the general appropriations (budget) bill or the capital budget bill, unless a request by a member for drafting with complete information has been received not later than 3:00 p.m. on Friday, December 20, 2002.

(b) Every Senate bill and joint resolution, except the general appropriations (budget) bill or the capital budget bill, must be signed off in Legislative Services by 3:00 p.m., on Friday, January 24, 2003. The last day to act on all Senate bills in the first body is April 10, 2003.

(c) Filing period for legislation to be acted on in the second half of the biennium, beginning January 2004, will commence on Monday, October 20, 2003. The office of legislative services shall not draft a senate bill or joint resolution, unless a request by a member for drafting with complete information has been received not later than 3:00 p.m., Friday, November 14, 2003. Last day to sign-off legislation for the January 2004 session shall be Friday, December 19, 2003, at 3:00 p.m.

(d) If a drafting request for a bill or resolution has been filed with the office of Legislative Services requiring a fiscal note as provided in RSA 14:44-47, the substance or a draft of the proposal may be provided to the legislative budget assistant for preparation of the required fiscal note without the specific consent of the sponsor of the proposal, provided that the identity of the sponsor shall not be disclosed.

(e) Notwithstanding the provisions of 17 (a), (b), and (c), a Senate bill, Senate joint resolutions, or Senate concurrent resolution may be accepted by Legislative Services for drafting and introduced into the Senate at any time prior to the deadline established by Senate Rules for the transfer of bills out of the first body if approved by either a majority of the Senate Rules Committee or a two-thirds vote on the floor.

(f) No bill the subject matter of which has been indefinitely postponed or made inexpedient to legislate in the Senate in the first-year session shall be admitted into the second-year session whether as a bill, an amendment, a committee of conference report or in any other manner.

(g) Legislation returned from the non-originating body, with an amendment, shall not be rereferred to Committee but shall have one of the following recommendations: Concur, Nonconcur, Nonconcur and Request a Committee of Conference. Adoption of a motion to Nonconcur kills the legislation.

## 19. Committees of Conference.

(a) Whenever there be any disagreement between the Senate and the House on the content of any bill or resolution, and whenever both bodies, voting separately, have agreed to establish a committee of conference, the President of the Senate shall appoint three members to the Senate conference committee on the bill and the Speaker of the House shall appoint four members to the House conference committee. Exceptions: (1) the House committee of conference on the operating budget shall consist of five members; (2) the number of the members of the committees of conference on any bill may increase or decrease if the President and the Speaker both agree.

The two committees of conference on a bill shall meet jointly but vote separately while in conference. A unanimous vote by both committees of conference shall be necessary for an agreed report to the Senate and the House by the committees of conference.

(b) The first-named person from the body where the bill or resolution in disagreement originated shall have the authority to call the time and place for the first meeting of the committees of conference on said bill.

(c) The first-named person on a committee of conference shall be the chairman of that conference. The chairman of the committee of conference of the body where the bill or resolution in disagreement originated shall chair the joint meeting of the committees of conference.

(d) No action shall be taken in either body on any committee of conference report earlier than some subsequent day, after the report has been delivered to the seats or placed on a member's desk. A committee of conference may neither change the title of any bill submitted to it nor add amendments which are not germane to the subject matter of the bill as originally submitted to it.

(e) Conference Committees on Budget Bills. The report of each committee of conference on either the general appropriation bill, or the capital improvements bill shall be printed in the journal or a supplement thereto of the appropriate body before action on said report is taken on the floor. Non-germane amendments, sections and footnotes to such bills (except footnotes in explanation of the principal text of such bills or designating the use or restriction of any funds or portions thereof) are prohibited and shall not be allowed under any circumstances. Notwithstanding the general provisions of paragraph (h) of this section, the Conference Committee on general appropriations bill may propose new items for inclusion in said bill but no such item may be so included unless and until it shall have been returned to both the Senate and the House and adopted in identical form by a majority vote in each body.

(f) When both committees of conference on a concurrent resolution proposing an amendment to the constitution have agreed, the committee of conference from the body which acceded to a request for committees of conference shall file its report with the clerk of that body who shall print it in full in the journal or supplement of that body. The report shall be made a special order of business at the late session of a subsequent day. After said report has been adopted by the first body, a message shall be transmitted to the second body which shall then act upon the report of its committee of conference.

(g) The sponsor of any bill or joint resolution referred to committees of conference shall, upon his request, be granted a hearing before said committees prior to action thereon.

(h) No member of a committee of conference shall sign any report that contains non-germane amendments or subject matter that has been indefinitely postponed in either body. For the purposes of this rule, a non-germane amendment would be any subject matter not contained in either the House or the Senate version of the bill.

(i) The deadline for Committee of Conference report sign-off is June 18, 2003 at 3:00 p.m.

20. All resolutions which may require the signature of the Governor shall be treated in the same manner as bills.

21. Every bill shall have three readings in the Senate previous to its passage. The first and second readings shall be by title only which may be accomplished by a conglomerate resolution, after which the bill shall be referred by the President to the appropriate committee and shall be printed as provided in Rule 22, unless otherwise ordered by the Senate. No bill after it has been read a second time shall have a third reading until after adjournment from the early session. The time assigned for the third reading of bills and resolutions shall be in the late session unless otherwise ordered by the Senate. The orders of the day for the reading of bills shall hold for every succeeding day until disposed of.
22. After every bill shall have been read a second time, and referred by the President to the appropriate committee, the Clerk shall procure a sufficient number of copies, printed on paper of uniform size, for the use of the legislature, and cause the same to be distributed to the members, and when printed the bill shall be immediately delivered to the committee to which it shall have been referred. Bills received from the House shall be printed at the same stage of their procedure unless they have been printed in the House and copies distributed in the Senate, in which case any amendment made by the House shall be duplicated and distributed in the Senate.
23. No amendment shall be made but upon the second reading of a bill; and all amendments to bills and resolutions shall be in writing, with the name of the Senator and the district he represents, or in the case of a committee amendment the name of the committee that recommended it, thereon. No amendment to any bill shall be proposed or allowed at any time or by any source, including a committee of conference, except it be germane. Amendments shall have been reviewed by the Office of Legislative Services for form, construction, statutory and chapter reference.
24. A hearing shall be held upon each bill referred to a committee, and notice of such hearing shall be advertised at least 5 days before hearing in the Senate Calendar. The Senate Calendar shall be available on the Internet for viewing as soon as it has been released for printing.
  - (a) All bills in the possession of committees shall be reported out with one of the following recommendations: ought to pass, ought to pass with amendment, rerefer to committee, inexpedient to legislate, or refer for interim study. Refer for interim study shall be a committee report only in the second year.
  - (b) Any legislation creating a chapter study committee shall have membership limited to members of the General Court.
25. When a bill is reported favorably with an amendment, the report of the committee shall state the amendment, and then recite the section of the bill in full as amended. The amendment shall be printed in the calendar of the Journal on the date that the report is listed for action. If no action is taken on that day, then the amendment shall be printed on the day to which the bill has been referred. All bills reported shall be retained by the clerk and shall not be finally acted upon until the following legislative day, and a list of such bills with the report thereon shall be published in the Journal for the day on which action shall be taken.

26. Every bill and joint resolution appropriating money, which has been referred to another committee and favorably accepted by the Senate, shall be committed to the Finance Committee for review. If any such bills have been referred jointly to the Finance Committee and another standing committee, the Finance Committee may report separately and a further public hearing may be held at the discretion of the Finance Committee. All bills appropriating money, which are referred directly to the Finance Committee shall have a hearing.
27. All warrants, subpoenas and other processes issued by order of the Senate shall be under the hand and seal of the President attested by the Clerk.
28. All committees of the Senate, including Senate members on committees of conference, shall consist of members of both parties as nearly equal as possible, provided that on all committees, both parties shall be represented. The President shall appoint the members of all committees, after consulting with the minority leader.
29. The standing committees of the Senate shall be as follows: The Committee on Finance, Committee on Capital Budget, Committee on Ways & Means, Committee on Banks, Committee on (present Economic Development) Energy and Economic Development, Committee on Education, Committee on Environment, Committee on Executive Departments & Administration, Committee on Wildlife & Recreation, Committee on Insurance, Committee on Internal Affairs, Committee on Interstate Cooperation, Committee on Judiciary, Committee on Public Affairs, Committee on Public Institutions Health & Human Services, Committee on Rules & Enrolled Bills, and the Committee on Transportation.
30. Messages shall be sent to the House of Representatives by the Clerk of the Senate.
31. Messages from the Governor or House of Representatives may be received at all times, except when the Senate is engaged in putting the question, in calling the yeas and nays, or in counting the ballots.
32. All questions shall be put by the President, and each member of the Senate present shall signify his assent or dissent by voting yea or nay, or shall abstain from voting by reason of a conflict pursuant to rule 42. If the President doubts, or a division is called for, the Senate shall divide. Those in the affirmative on the question shall first rise from their seats and stand until they be counted. The President shall rise and state the decision of the Senate.
33. No person except members of the Senate and its officers, the Governor, Council members, the Secretary of State, the Treasurer, the Speaker of the House of Representatives and its officers and clerks, shall be admitted to the floor of the Senate while the Senate is in session, except by the invitation of the President, or some member with the President's consent.
34. The Senate shall adjourn to meet on the subsequent legislative day for the early session at the time mentioned in the adjournment motion. The late session shall immediately follow the early session unless the Senate shall otherwise order.
35. No standing rule of the Senate shall be suspended unless two-thirds of the members present and voting vote in favor thereof. This rule shall not apply to Senate Rule 9.

36. No rule shall be rescinded unless two days notice of the motion has been given and two-thirds of those present and voting vote therefore.
37. The Senate may resolve itself into a Committee of the Whole at any time on motion made for that purpose; and in forming a Committee of the Whole, the President shall leave the chair, and appoint a chairperson to preside in committee.
38. The President when performing the duties of the Chair may, at any time, name any member to perform the duties of the Chair.
39. The staff of the Senate shall be comprised of a clerk, an assistant clerk, a sergeant-at-arms, and a doorkeeper who are to be elected by the Senate, and such other personnel as the President shall appoint. The President shall define the duties of all members of the Senate staff which are not fixed by statute or otherwise ordered by the Senate.
40. Each member of the staff of the Senate shall be available on call to carry out the work of the Senate.
41. The committees shall promptly consider and report on all matters referred to them. The President may authorize such committees having a heavy load of investigation, redrafting, research or amendments to meet as needed on non-legislative days during the legislative session. The Clerk of the Senate shall prepare a list by number, title and sponsor of all Senate bills and resolutions in committee which have not been acted upon within one week before the deadline established for the transfer of bills and resolutions from the Senate to the House of Representatives, and he/she shall distribute this list to every member of the Senate as soon as it is prepared.
42. In all instances every member shall act in conformance with the duly adopted Ethical Guidelines and Opinions of the New Hampshire General Court.
43. Action on the floor of a report of the Committee on Finance or a Committee of Conference on either the general appropriations (budget) bill or the capital budget bill, shall not be taken by the Senate, until said report has been available from the Senate Clerk twenty-four hours in advance, in written form. Nongermane amendments and footnotes to such bills (except footnotes in explanation of the principal text of such bills or designating the use or restriction of any funds or portions thereof) are prohibited and shall not be allowed under any circumstances.
44. **PERSONAL PRIVILEGE:** A Senator may, as a matter of personal privilege, defend his/her position on a bill, his/her integrity, his/her record, or his/her conduct, against unfair or unwarranted criticism, or may speak of an issue which relates to his/her rights, privileges or conveniences as a Senator; provided, however, the matters raised under personal privilege shall not be subject to questioning, answer, or debate, by another Senator. Personal Privilege remarks may be included in the Daily Journal if requested by the Senator, and in the Permanent Journal by vote of the Senate. A Senator may speak on other matters of his/her choosing and in such cases may be subject to questioning and/or answer according to the Rules of the Senate.
45. Any appeal from the ruling of the presiding officer shall be decided by majority vote of the members present and voting.

46. No new motion shall be admitted under color of amendment as a substitute for the motion under debate.
47. No officer or employee of the Senate during the session or any adjournment thereof shall purchase or contract for the purchase, pay or promise to pay any sum of money on behalf of the Senate or issue any requisition or manifest without the approval of the Senate President.

*January 9, 2003*

### INAUGURATION DAY

The Senate met at 11:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

What will be happening in a few moments in the next room is the same thing that happened here in this chamber last month. A transfer of power. Back on the fourth of December, the former group that had been assembling here stepped aside to make room for you as you stepped forward. And now, at around twelve thirty today, the authority of governance in our state will be shifted from one person to another. Remember that any transfer of power, one of the greatest gifts of our Democratic process, is only of value when it is understood and acted upon as a transfer, a shift of opportunity, not just authority. The prayers of the people today are that you, and the House and Governor Benson will figure out together how to grab this new chance and to make us all better because of how you do it. What Shakespeare wrote in Julius Caesar is true:

There is a tide in the affairs of men  
Which taken at the flood, leads on to fortune;  
Omitted, all the voyage of their life  
Is bound in shallows and in miseries.

We're counting on you and I am praying for you.

Let us pray:

*Gracious God, You are the supreme Governor of all creation and we are Your hopeful constituents. As the authority shifts within the corridors of this old building, may new opportunities rise like the tide and carry us all together toward those places where we really need to be. Amen*

Senator Johnson led the Pledge of Allegiance.

Senator Below is excused for the day.

### INTRODUCTION OF GUESTS

#### HOUSE MESSAGE

The House of Representatives is ready to meet in Joint Convention for the purpose of hearing the report of the Joint Committee appointed to compare and count the votes for Governor and Executive Council, for the Inauguration of the Governor and for the taking of the oath by the Executive Council.

Senator Barnes moved that the Senate meet in Joint Convention for the inauguration of the Governor, Craig Benson.

**Adopted.**

**In recess for Joint Convention.**

**Out of recess.**

### **RESOLUTION**

Senator Larsen moved that the Senate adjourn from the early session, that the business of the late session be in order at the present time and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

### **ANNOUNCEMENTS**

#### **LATE SESSION**

#### **RESOLUTION**

Senator Clegg moved that the Senate recess until the Call of the Chair for the sole purpose of introducing legislation, referring bills to committee and scheduling hearings.

**Adopted.**

**In recess to the Call of the Chair.**

**Out of Recess.**

### **INTRODUCTION OF SENATE BILLS**

Senator Clegg moved that in accordance with the list in the possession of the Senate Clerk, Senate Bills numbered **22-59** inclusive shall be by this resolution read a first and second time by the therein listed titles.

**Adopted.**

#### **First and Second Reading and Referral**

03-0281

**SB 22**, establishing a committee to study the economic effects of student activities on state higher education campuses on the surrounding municipalities. (Johnson, Dist 2: Education)

03-0284

**SB 23-FN**, allowing veterans the right to purchase credit in the retirement system for certain service in the armed forces. (Clegg, Dist 14; Barnes, Dist 17; D'Allesandro, Dist 20; Kenney, Dist 3; Boyce, Dist 4; Heon, Straf. 67; Coughlin, Hills 45; O'Neil, Rock 85; Hamel, Rock 79: Executive Departments and Administration)

03-0287

**SB 24**, relative to license revocations for DWI offenders under the age of 21. (Clegg, Dist 14; Prescott, Dist 23; D'Allesandro, Dist 20; Boyce, Dist 4; Letourneau, Rock 77; Tholl, Coos 2; Artz, Hills 64: Judiciary)

03-0393

**SB 26**, removing the penalty against teachers who fail to keep registers. (O'Hearn, Dist 12: Education)

03-0395

**SB 27**, extending the kindergarten construction program. (O'Hearn, Dist 12: Finance)

03-0403

**SB 28-FN**, relative to the transcription of hearings before standing committees of the senate. (D'Allesandro, Dist 20: Internal Affairs)

03-0459

**SB 29-FN-A-LOCAL**, refunding certain meals and rooms taxes paid by the city of Manchester. (D'Allesandro, Dist 20; Martel, Dist 18; Gatsas, Dist 16; Buckley, Hills 56: Finance)

03-0502

**SB 30-FN**, relative to dissemination of false statements about candidates. (D'Allesandro, Dist 20: Judiciary)

03-0572

**SB 31**, changing the name of the joint committee on legislative facilities and codifying the powers and duties of the committee. (D'Allesandro, Dist 20: Internal Affairs)

03-0592

**SB 32**, relative to municipal budget recommendations. (Clegg, Dist 14; Boyce, Dist 4; Kurk, Hills 48; C. Christensen, Hills 58; Packard, Rock 75; Giuda, Graf 13: Public Affairs)

03-0285

**SB 33-FN**, implementing procedures for a hospital to assume care and custody of an abandoned child and creating an exception to the crime of endangering the welfare of a child. (Clegg, Dist 14; Prescott, Dist 23; Boyce, Dist 4; Flanders, Dist 7; Woods, Straf 69; Giuda, Graf 13; Balboni, Hills 59: Public Institutions, Health and Human Services)

03-0426

**SB 34**, relative to independent living retirement communities. (Gatsas, Dist 16; Larsen, Dist 15; Barnes, Dist 17; Roberge, Dist 9; Morse, Dist 22; MacKay, Merr 39; French, Merr 34; Vaillancourt, Hills 56; King, Coos 1; S. L'Heureux, Merr 37: Public Affairs)

03-0463

**SB 35**, relative to the transfer and exchange of certain state-owned land for certain land owned by the Manchester water works. (D'Allesandro, Dist 20; Martel, Dist 18: Environment)

03-0583

**SB 36-FN**, relative to driving under the influence of a controlled drug and relative to protective custody of a person impaired by drugs. (Clegg, Dist 14; Eaton, Dist 10; Boyce, Dist 4; Packard, Rock 75; Tholl, Coos 2; Stevens, Carr 7: Judiciary)

03-0703

**SB 37-FN**, increasing the amount paid to the firemen's relief fund from insurance department revenues. (Gallus, Dist 1; Johnson, Dist 2; Kenney, Dist 3; Belanger, Rock 76; Woodward, Coos 3; Gionet, Graf 11; B. Ham, Graf 12: Insurance)

03-0704

**SB 38-FN-A-LOCAL**, authorizing special number plates for firefighters and dedicating the revenues for matching grants to purchase firefighting equipment. (Gallus, Dist 1; Odell, Dist 8; Dickinson, Carr 4; Guay, Coos 2; Woodward, Coos 3: Transportation)

03-1066

**SB 39**, relative to the results of a preliminary breath test as evidence in court. (Flanders, Dist 7; D'Allesandro, Dist 20; Below, Dist 5; Tholl, Coos 2; Stevens, Carr 7: Judiciary)

03-1067

**SB 40**, relative to filing of complaints for violation-level offenses. (Flanders, Dist 7; Welch, Rock 79: Judiciary)



03-1123

**SB 41-FN**, relative to the installation of airbags by motor vehicle repair facilities. (Green, Dist 6; Flanders, Dist 7; Weare, Rock 84: Judiciary)

03-1130

**SB 42**, relative to charitable contributions by insurance agents. (Flanders, Dist 7; Odell, Dist 8: Insurance)

03-1140

**SB 43**, relative to archives and records management. (Martel, Dist 18: Public Affairs)

03-1153

**SB 44**, relative to penalties for vehicle dealers. (Clegg, Dist 14; Martel, Dist 18; Letourneau, Rock 77; Packard, Rock 75: Transportation)

03-0433

**SB 45**, relative to property tax exemptions and credits for the elderly, veterans, and the disabled, and allowing municipalities to adopt an optional date for filing exemptions. (Gatsas, Dist 16; Larsen, Dist 15; Barnes, Dist 17; Roberge, Dist 9; Gongalez, Hills 49: Public Affairs)

03-0562

**SB 46-FN**, relative to dedicated funds. (Prescott, Dist 23; Green, Dist 6; Boyce, Dist 4: Finance)

03-0615

**SB 47-FN**, relative to refunds for tolls paid on account of shrinkage or loss by evaporation of motor fuel. (Clegg, Dist 14; Prescott, Dist 23; Packard, Rock 75; Letourneau, Rock 77; Pepino, Hills 51: Transportation)

03-0818

**SB 48**, exempting housing for older persons from certain age discrimination laws. (Clegg, Dist 14; Gallus, Dist 1; O'Hearn, Dist 12; Hunt, Ches 28; J. Pratt, Ches 24: Executive Departments and Administration)

03-1076

**SB 49**, relative to fluoridation of public water supplies and local decisions regarding fluoridation. (Prescott, Dist 23; O'Hearn, Dist 12; Johnson, Dist 2; Souza, Hills 51; Hagan, Hills 50; B. Richardson, Ches 26: Environment)

03-1109

**SB 51-FN**, relative to membership on the New England Board of Higher Education. (Peterson, Dist 11; D'Allesandro, Dist 20: Education)

03-1198

**SB 52**, relative to a voluntary certification program for police dogs and handlers. (Clegg, Dist 14; Prescott, Dist 23; Chandler, Carr 4; Giuda, Graf 13; Tholl, Coos 2; Welch, Rock 79; Whalley, Belk 31: Public Affairs)

03-0363

**SB 53**, establishing an advisory board to the labor commissioner and relative to the membership of the compensation appeals board. (Flanders, Dist 7; Roberge, Dist 9; Clegg, Dist 14; Fraser, Merr 37; Mercer, Hills 59; Holden, Hills 48; Weyler, Rock 79; Mock, Carr 4: Insurance)

03-0473

**SB 54-FN-LOCAL**, relative to the implementation of town or city property revaluations. (Boyce, Dist 4: Public Affairs)

03-0686

**SB 55-FN**, raising the age at which a child may terminate his or her public education. (O'Hearn, Dist 12; Johnson, Dist 2; Green, Dist 6; Carson, Rock 75; S. L'Heureux, Merr 37; Rep, Crane, Hills 59: Education)

03-0765

**SB 56-FN**, relative to parking for persons with disabilities. (Boyce, Dist 4; Martel, Dist 18; Boyce, Belk 31; Pilliod, Belk 31; D. Cote, Hills 62: Transportation)

03-1063

**SB 57-FN**, relative to certain accounts within the fish and game fund. (Gallus, Dist 1; Odell, Dist 8; Clegg, Dist 14; McKinney, Rock 75; Woodward, Coos 3; Royce, Ches 28; R. L'Heureux, Hills 58: Wildlife and Recreation)

03-1113

**SB 58-FN-A**, relative to the net operating loss under the business profits tax. (Foster, Dist 13; Sapareto, Dist 19; O'Hearn, Dist 12; Clegg, Dist 14; Below, Dist 5; Cohen, Dist 24; Boyce, Dist 4; Lasky, Hills 65; Mercer, Hills 59; Norelli, Rock 86; Weyler, Rock 79: Ways and Means)

03-1133

**SB 59-FN**, relative to administrative license suspension hearings. (Clegg, Dist 14; Prescott, Dist 23; D'Allesandro, Dist 20; Tholl, Coos 2; Stevens, Carr 7: Judiciary)

### LATE SESSION

Senator Clegg moved that the Senate adjourn.

**Adopted.**

**Adjournment.**

*January 30, 2003*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

You have to search very carefully on the outskirts of the little English village of Deopham Green to find it, but its traces are still there. The runways have, for the most part, crumbled back into the farmland, the barracks and hangers and fuel tanks and bomb dumps are all gone. But the evidence of what was there just sixty years ago still is engraved upon the fabric of that place. My father-in-law was just 21 when he piloted his huge B17 from those runways. Deopham Green Field is one of the dozens of phantom airfields that today dot the countryside of central and eastern England. It is from these very places that the final phase of the allied victory over Germany was launched. Those launching pads are fast disappearing, but the effect of the missions, which started from them, secured the freedoms we enjoy right up to this moment. Years from now this Senate, this group of passionate, caring and committed people, will have crumbled and been forgotten like the old air bases of World War II. It will be what was launched from here by all of you, carefully, strategically, bravely and with wisdom that will be remembered – for better or for worse. Always keep the long view.

Let us pray:

*Mighty Creator, may You be the navigator of our mission, the engineer of our plans and the pilot of our destinies, that when this fragile air strip is little remembered, that difference will still have been huge. Amen.*

Senator Kenney led the Pledge of Allegiance.

### **INTRODUCTION OF GUESTS**

**SENATOR EATON:** Before we start the business of the Senate today, I would just like to announce that we are now in the twenty-first century with the worldwide web streaming audio. I do know that Senator Boyce's family, his mother, brother and sister are out in Colorado listening to this. I hope that works very, very well for all of us.

### **INTRODUCTION OF STAFF**

#### **LEGISLATIVE AIDES**

Elizabeth Ignacio

Christopher Williams

#### **ASSISTANT TO THE DEPUTY MINORITY LEADER**

Sonja Caldwell

#### **PLYMOUTH STATE SENATE INTERN**

Tyler Hagstrom

### **COMMITTEE REPORTS**

**SB 26**, removing the penalty against teachers who fail to keep registers. Education Committee. Ought to pass, Vote 3-0. Senator O'Hearn for the committee.

**SENATOR O'HEARN:** Thank you, Mr. President. I move SB 26 ought to pass. Senate Bill 26 addresses a penalty originally enacted to ensure that teachers regularly file pupil registers with the local school board and upon not doing so received a \$20 penalty from wages earned. The school districts currently replace the teachers as being responsible for filing the pupil registers; therefore, the current penalty from teachers should be removed. The withholding of wages applies to paper registers, today over 75 percent of our districts now file registers electronically. Senate Bill 26 seeks to eliminate a fine from teachers, which no longer is applicable. The Education Committee asks for your support for the motion of ought to pass.

**Adopted.**

**Ordered to third reading.**

### **SUSPENSION OF THE RULES**

Senator Below moved that the rules of the Senate be so far suspended as to consider an amendment to Senate Rules regarding Rule #33.

**SENATOR BELOW:** As some of you may know or as all of you may recall I should say, at our first session day this year, we adopted rules. For the first time, we adopted a rule that provided for only the Speaker of the House and its officers and clerks should be admitted to the floor of the Senate, except by invitation of the President or some member with the President's consent. In the past, our rules had always allowed House members on the floor. The members of the Democratic caucuses of the Senate, at least had supported that action with the understanding and assurance from the majority leader of the Senate that he received an assurance from the House leadership that the House would not retaliate and also an assurance from the Senate President that this would be liberally interpreted and allowed normally that House members would be admitted with his consent. I understand now that the House is considering an amendment to their rules to prohibit Senate members from the floor of the House and without the consent of the Speaker of the

House, which may or may not be that easy to obtain at times because with such a large body, it is much harder to get the attention of the Speaker of the House. I think that this would be an unfortunate event to occur. I think that it would be a mistake to have this sort of shut down of relationships between the House and the Senate. I think that historically, that we have enjoyed the opportunity to occasionally visit on the floor of the House. It is a long way around to the back. Apparently, their rule would also prohibit us from the ante-room. Sometimes there are things going on and you just want to check with a House member about something and it is very convenient to be able to pop in and to scoot around and connect with them. To my knowledge, we never really had a problem with too many House members on the floor of the Senate. When I was in the House, I was aware that we were allowed on the Senate floor, but only very rarely had the opportunity or the occasion to visit somebody or to visit the floor of the Senate. So therefore, I would urge the members to support the suspension of this rule. The amendment that I would offer would make a very simple change to allow...to change where we say "no person except the Speaker of the House shall be admitted to the floor of the Senate" to say "members of the House". To open it up so that we don't have that sort of position and retaliatory position now. Some people have said that the House is going to do this anyway, but I think that if we go ahead and change our rule, they won't have the excuse that they are just doing something to mirror our rules and we won't have this sort of, downward spiral, in terms of our historical amicable relations with the House. Thank you, Mr. President.

**Recess.**

**Out of recess.**

SENATOR CLEGG: I have a parliamentary inquiry. Are we currently voting on the motion to suspend the rules?

SENATOR EATON (In the Chair): That is correct.

SENATOR CLEGG: Will that require a two-thirds?

SENATOR EATON (In the Chair): Yes it will.

SENATOR CLEGG: Thank you.

**Question is on the motion to suspend the rules.**

**A 2/3 vote is necessary.**

**A roll call was requested by Senator Cohen.**

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 6 - Nays: 18**

**Motion failed.**

**SB 14**, relative to vacancies in county offices. Internal Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Boyce for the committee.

Internal Affairs  
January 23, 2003  
2003-0046s  
10/09

### Amendment to SB 14

Amend the bill by replacing section 2 with the following:

2 Vacancies Among County Officers; Election by Members of County Convention. Amend RSA 661:9, I-II to read as follows:

I. If a vacancy occurs in the office of county sheriff, county attorney, register of deeds, or county treasurer, the ~~[superior court]~~ **members of the county convention** shall fill the vacancy for the unexpired term **by majority vote**.

II.(a) If a vacancy occurs in the office of a county commissioner, the ~~[superior court]~~ **members of the county convention** shall fill the vacancy **by majority vote** until the next biennial election of county officers. If the term filled is less than the unexpired term, then notwithstanding any provisions of RSA 653:1, VI, the commissioner district filled pursuant to this paragraph shall be added to the next biennial election ballot to be chosen by the inhabitants of the county for a two-year term.

(b) The provisions of subparagraph (a) shall apply only where the vacancy occurred no later than 30 days preceding the printing of the ballots for the primary election.

(c) The provisions of RSA 655:32 and RSA 655:37 relating to nominations by appropriate party committees for vacancies in an office on a primary or general election ballot, respectively, shall apply to vacancies to be filled under this paragraph.

SENATOR BOYCE: I move that SB 14 ought to pass with amendment. Senate Bill 14 provides that members of the county convention, the House members elected from that county, shall fill the vacancies in county offices. The current process provides that the Superior Courts decide and fill any vacancies in county offices that may occur. Senate Bill 14 places this responsibility with the elected members of the county convention. The Internal Affairs Committee asks your support of SB 14 with the committee amendment. Thank you.

SENATOR D'ALLESANDRO: I wish to speak in opposition to the amendment. The bill as enacted, says that members of the county commission will take the vote and that the person filling the vacancy should be a member of the same party of the vacancy. That is consistent. I think that is consistent with the will of the people. The convention taking over that responsibility, I don't have any problem with. It seems to me, if indeed the people have spoken and a particular party has been elected, that vacancy should be filled by a member of that party, thus fulfilling the will of the people for that term and at the next general election, the will of the people could also be expressed by virtue of the election that takes place. The original bill, as submitted, is a bill that I can support and support wholeheartedly. The amendment says not that the party of the individual will be represented, but that any person selected by a majority vote will get that position. I don't think that is consistent with the will of the people. Thank you, Mr. President.

SENATOR BOYCE: Senator D'Allesandro, were you aware that when this bill was passed last year and vetoed by the governor, her message was that because that clause was in there, was one of the reasons she decided to veto it. In the process through the House and the Senate last

time, it was put in and taken out and there is quite a bit of debate on that. Were you also aware that in the committee, during our discussions, that it came up what would happen if the person holding the office was not of any party, was an undeclared voter or was a member of one of the smaller minority parties that don't have a lot of people that want to run those offices?

SENATOR D'ALLESANDRO: I guess I am not aware of all of the items that you have presented, but what I am aware of is that the bill as presented is acceptable to me in the form that it was presented. The amendment is not acceptable to me.

SENATOR BOYCE: Thank you.

SENATOR D'ALLESANDRO: You're welcome.

SENATOR LARSEN: I, too, rise to oppose the bill as amended by the Public Affairs Committee. I believe that in fact the original bill does make more sense in that it does say that if there is a vacancy that occurs, members of the county convention would fill the vacancy by majority vote and the person to fill the vacancy would be a member of the same party as the person vacating the office. That person who is vacating the office has been elected by the people. They have chosen someone whose ideology or thought processes agree with theirs. It makes some sense to fill a vacancy with someone of the same party. By removing it and returning it to or turning it away from us, a superior court appointment to members of the county convention filling the vacancy by majority vote, I am afraid what you do is to change the vote of the people and the outcome, I believe, becomes more partisan. I plan to vote against the bill, the motion ought to pass as amended, but support the original SB 14. Thank you.

SENATOR BARNES: Thank you, Mr. President. Just a point of order. This bill did not go to Public Affairs. It came out of Internal Affairs.

SENATOR LARSEN: I am sorry.

SENATOR EATON (In the Chair): I am sorry, Internal Affairs, yes.

**Question is on the adoption of the committee amendment.**

**A roll call was requested by Senator Below.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**The following Senators voted No: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 17 - Nays: 6**

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 17, relative to incompatible offices. Internal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Boyce for the committee.**

Internal Affairs  
January 22, 2003  
2003-0041s  
03/04

### Amendment to SB 17

Amend the bill by replacing section 1 with the following:

1 Nominations; Incompatible Office; Federal Elected Offices Added.  
Amend RSA 655:10 to read as follows:

655:10 Incompatible Offices. No person shall file declaration of candidacy or primary petitions for nomination at the primary for incompatible offices. For the purposes of this section, incompatible offices shall include the offices of governor, representative to the general court, state senator, and councilor, *and any federal elected office*. If any person shall file for such incompatible offices, the secretary of state shall advise the person of the provisions hereof and said person shall then advise the secretary of state which of said offices he *or she* wishes to retain in order to seek said nomination. If a filing fee has been paid for a declaration of candidacy which [he] *the person* declines, the fee shall be returned to [him] *the person*. No person shall seek or hold the position as a member of the general court and county commissioner at the same time. No person shall hold 2 of the offices mentioned in RSA 655:9 at the same time, and the acceptance of one of them shall be a resignation of the others.

2003-0041s

### AMENDED ANALYSIS

This bill adds "any federal elected office" to the definition of incompatible offices.

SENATOR BOYCE: I move that SB 17 ought to pass with amendment. SB 17 adds "any federal office" to the definition of incompatible offices for which a candidate cannot run for election at the same time. This is a matter that comes up every election time and has no bearing on party affiliation. It doesn't seem fair to the voters to allow candidates to appear on the ballot more than one time for more than one office when they cannot serve more than one. The committee amendment merely clarifies that this refers to elected offices and not to appointed offices. In executive session, it was pointed out that when someone signs an intent to run, what they are actually signing is an intent to serve and it could be considered to be perjury if you signed both intents and could not be intending to serve both seats. It would be against several laws. The Internal Affairs Committee asks your support of SB 17 with the committee amendment. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 11-FN**, establishing new special justice positions in the Manchester, Concord, and Nashua district courts. Judiciary Committee. Ought to pass with amendment, Vote 3-0. Senator Clegg for the committee.

**Senate Judiciary**  
**January 23, 2003**  
**2003-0047s**  
**01/04**

**Amendment to SB 11-FN**

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect upon its passage.

SENATOR CLEGG: I move that SB 11 ought to pass with amendment. Senate Bill 11 establishes new full-time special justice positions in the Manchester, Concord and Nashua District Courts. Based on the current weighted caseloads, Nashua and Manchester Courts are already assigned the equivalent of three full-time judges. Manchester has a caseload of 332 percent and Nashua has grown to over 290 percent. Having the judges named full-time would provide consistency to the constituents as well as the system. The Concord Court has already had their judge elevated to full-time status. The bill proposes that the existing special justices of the Manchester and Nashua District Courts be named as the full-time judges. The committee amendment makes the bill effective upon passage. Thank you.

SENATOR LARSEN: I rise to support SB 11. Clearly the city of Concord will, as well as Manchester and Nashua's courts will be assisted through the addition of these special justices and their acknowledgement that they are in fact already working full-time. I also would rise to say that as a co-sponsor of this bill, it came to my attention that another issue which we worked on in previous years could in fact be a part of this discussion which is the question in which Hooksett District Court in fact, needs a new special justice position as well. We have heard, those of us...three of us who represent Hooksett, Pembroke and Allentown are aware that our police officers in those districts are in fact spending a lot of time waiting for special justice...for the time to come when they can present their cases. It is something which should be discussed. I understand that it will be discussed in Finance, which I think is a very good idea.

SENATOR BARNES: Well, Senator Larsen has said it all. The three of us will get together and perhaps bring this forward to the Finance Committee when they have the hearing on this piece of legislation. It is a very important piece for the Hooksett District Court.

SENATOR GATSAS: Senator Clegg, did I understand you correctly that the justice at the Concord Court was elevated to that position?

SENATOR CLEGG: I probably shouldn't have said "elevated" but our understanding is that the Concord Court has already had their judge, Susan Carter, appointed to full time status.

SENATOR GATSAS: By the Governor and Council, as the procedure is?

SENATOR CLEGG: Correct.

SENATOR GATSAS: Thank you.

SENATOR D'ALLESANDRO: I rise in support of the bill. During the testimony given on this piece of legislation, it was clearly stated that the level of activity at the district court level is extremely high. In order to have consistency of justice, it appears that a full-time justice in that environment would serve the public in the best possible manner. What is happening now is that they are bringing in justices so that there is



an inconsistency. This would create that consistency, I think would speed up justice and would be an effective mechanism in serving the public. Thank you, Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 13**, relative to judicially appointed officials. Judiciary Committee. Inexpedient to legislate, Vote 3-0. Senator Peterson for the committee.

SENATOR PETERSON: I move SB 13 inexpedient to legislate. Senate Bill 13 sought to change the procedure for courts in the appointment of a variety of officials. While the committee is sympathetic to some parties who have disagreed with the recommendations made by people appointed in their cases, SB 13 would have placed a tremendous administrative burden on our court system. In many cases, statute already requires that these nominations be made within a certain number of days so that justice is not delayed. In probate estates, this legislation is the exact opposite direction of many of the reforms that have already been adopted. The Judiciary Committee feels that SB 13 is not a positive step forward and finds it unnecessary. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 24**, relative to license revocations for DWI offenders under the age of 21. Judiciary Committee. Ought to pass with amendment, Vote 3-0. Senator Foster for the committee.

**Senate Judiciary**

**January 23, 2003**

**2003-0050s**

**03/10**

#### **Amendment to SB 24**

Amend the bill by replacing all after the enacting clause with the following:

1 Penalties for Intoxication or Under Influence of Drug Offenses; Person Under the Age of 21. Amend RSA 265:82-b, I-b to read as follows:

I-b. Any person [~~under the age of 21~~] who is convicted of an offense under RSA 265:82, RSA 265:82-a, or RSA 630:3, II ***and the offense occurred while the person was under the age of 21*** shall be sentenced according to the provisions of this section, except that in all cases the person's driver's license or privilege to drive shall be revoked for not less than one year.

2 Effective Date. This act shall take effect upon its passage.

**2003-0050s**

#### **AMENDED ANALYSIS**

This bill clarifies that a mandatory one-year license revocation applies to certain DWI offenses where the offense occurred while the offender was under the age of 21.

SENATOR FOSTER: Thank you, Mr. President. I move that SB 24 ought to pass with amendment. Senate Bill 24 clarifies that the mandatory one-year license revocation applies to certain DWI offenses where the offense occurred while the person was under the age of 21. This was the

intent of the current statute, but it had been circumvented if the young adult was charged with DWI under the age of 21, but was able to delay conviction until after the age of 21, she was able to get off without the one-year mandatory loss of license. The amended language clarifies the intent and closes this loophole. The Judiciary Committee asks your support for the motion of ought to pass with amendment. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 32**, relative to municipal budget recommendations. Public Affairs Committee. Ought to pass, Vote 4-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President, I move that SB 32 ought to pass as recommended by the Public Affairs Committee. This bill addresses a conflict that has arisen in several communities throughout the southern tier. I understand also, the northern tier has had a little bit of a problem with this...between municipal budget committees and their respective school boards and board of selectmen. The conflict involves the process in which a recommended budget is received in a deliberative session or town meeting. According to current legislation, towns with a budget committee are supposed to send the revisions made by the committee to the town meeting for consideration. However, certain boards of selectmen have been told by their attorneys that it is okay to ignore the recommendations of the budget committee, and instead submit their own budget for consideration. This bill would clarify the procedure for municipal budgets. This bill states that any town with a budget committee must submit the recommendations by the committee to the deliberative session, instead of replacing it with an original budget from the school board or board of selectmen. The committee voted 4-0 that this bill ought to pass. Thank you, Mr. President and I hope that we get the support of the entire body.

SENATOR LARSEN: I rise to oppose SB 32 and its motion of ought to pass. In the Public Affairs Committee, we heard the case of SB 32 that towns with municipal budget committees, might also be towns in which the alternative budget procedure called SB 2 occurs. In those towns that are SB 2 towns, as we call them, those towns are limited by another law which we did not have time to go back and research, but were advised in committee, that law says that in a SB 2 town, you cannot increase in your deliberations, the budget by more than 20 percent. The result of passing this legislation, SB 32, would mean that in towns that wanted to return to their prior school board recommended budget, but the town Budget Committee had advised a 30 percent cut, that town could never again vote on the school budgets 100 percent fully funded school budget as recommended by their own school board. It gives far greater weight than to the Budget Committee's vote. There is a danger in that, at least I am from a city so I don't go to town meetings and have the opportunity to vote unless I go and represent the two towns and sit as an observer. My understanding is, that it does in fact, then limit those citizens in SB 2 towns, from ever being able to vote on the recommendation of their own school board. They have to stick with the Budget Committee's recommendation. They can never return it to 100 percent of the School Board Budget, even if that is the will of the people. I think

that from my hearing of this bill, it leaves those who want to support their school board, unable to do so through a vote, procedurally, in their town meeting. I think that is unfortunate and if I have not heard that right, I would like to hear it from those who believe that this bill makes sense, but that is my understanding of the consequence of this bill. I think that it limits what the will of the people, the voters can do in their town meeting process. I think that it is an unfortunate consequence. For that reason, I intend to vote against SB 32.

SENATOR BARNES: Senator Larsen, if my memory serves me right, you are on Public Affairs, you are the Vice Chairman and the vote of the committee was 4-0 and there are five of us on the committee and Senator Green wasn't able to be there, so that meant that you voted for it along with the other three members?

SENATOR LARSEN: No, I believe that I was absent for that vote. I have conflicts because during the time which Public Affairs is meeting, Internal Affairs also begins to meet. Does that show me as present for the vote?

SENATOR BARNES: Roberge, Barnes, Morse and Larsen.

SENATOR LARSEN: If that is the case, then...

SENATOR BARNES: I was just confused on why a few days ago you voted yes and all of a sudden today...thank you for answering the question. My comment is...

SENATOR LARSEN: I continue to believe that it makes no sense to do this and if that is the case, I was obviously mistaken in my vote at that time.

SENATOR BARNES: You were just overwhelmed by my testimony. The comment that I have to make is that someone who we all rely on for affairs and situations like this is the New Hampshire Municipal Association. Maura Carroll was there and spoke very much in favor of this saying that the Municipal Association has done battle, nice battle, with a couple of these law firms that are misguiding and misleading some of the towns. The Municipal Association, I will add to the list, of also being 100 percent in favor of this because of the problems that this has created throughout the villages and towns of our state of New Hampshire.

SENATOR CLEGG: Thank you, Mr. President, I would like to make a couple of corrections. It doesn't matter whether you are in a SB 2 bill or not. I am from Hudson and we have everything that you could possibly have, we have in our government, including the Municipal Budget Act. It is something that you vote on as a community. When you vote on that, you elect people to look at the budget after the school boards have done their work, after the selectmen have done their work. You also accept that you can only increase the recommendation of the Budget Committee by ten percent. It doesn't matter whether you are a SB 2 town or not a SB 2 town. If you adopt the Municipal Budget Act, you are only allowed to increase the Budget Committee's budget by ten percent. That is something that you can do away with. If you decide that the Budget Committee is getting out of hand, you put a warrant on the ballot and you vote them out of existence. What this does is this clarifies the law of whose number is put on the warrant. If you have in fact elected to have a Municipal Budget Committee, then the law states that their number has to be on the warrant. How else would you know when you start to increase, where your ten percent limit was? There is a law firm in the southern tier town who does a lot of work, who has now said that since you are the school

board or the selectmen, just do whatever you want because you print the warrant. This bill says that you can't do that. If you have voted to have a budget committee, you have to abide by the laws that you adopted when you voted in the Budget Committee. Thank you, Mr. President.

**Adopted.**

**Ordered to third reading.**

SENATOR CLEGG: Mr. President, I would like to apologize now for misspeaking, before I called you by another name. That is from my eight years across the hall. I will remember that you are Mr. President.

SENATOR EATON (In the Chair): We will talk to you later.

### **RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the last session be in order at the present time, that all bills ordered to third reading be by this resolution read a third time and passed and all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

### **ANNOUNCEMENTS**

SENATOR COHEN (RULE #44): I would like to take this moment to express gratitude to all 24 of us for signing the resolution supporting retention of lifetime, medical care for military citizens of World War II and Korea. As was mentioned by Reverend Jones this morning, it was over sixty years ago following an unprecedented and unprovoked attack on our nation. A generation of men and women stood up to fight the greatest threat to freedom the world has ever seen. New Hampshire's citizens heard the call to action and lined up at recruiting offices across the state. They came from Hinsdale to Hampton, from Pittsburg down to Plaistow to literally help save the world. They believe, as we do now, in America's promise, and they also believed in America's promises. A promise of full lifetime health benefits was made to military personnel for more than sixty years by our armed forces. But then, suddenly, in 1995, the government announced that it would abandon its obligation and withdrew its commitment to full medical benefits for our veterans displaying the courage shown in the Pacific and the trenches of Europe and the battlefields of Korea, a group of Vietnam as well. A group of veterans pulled together to fight once again, however, this time the bureaucracy of Washington was no longer an ally. A little history, In 2001, a three-judge panel properly sided with the veterans in declaring their entitlement to full health benefits. Unfortunately, that was not the end of it. The United States Justice Department, our Justice Department, shamed itself by challenging the decision and unfortunately, they won. It is not over yet. The Justice Department claimed that the recruiters, who made these promises in unison, lacked the authority to make such promises even though they had been making those promises in unison for over sixty years. In fact, the court actually held that the secretaries of the Army, Navy, Air Force and Marines lacked that authority as well. Their dissent to that opinion, the four judges stated, "If congress can appropriate billions for this aspect of national defense and not know how it was accounted for, then God save the Republic." Of course congress knew, of course the service secretaries authorized promises in return for service. Of course those military officers served until retire-

ment in reliance, and of course there is a moral obligation to these men.” This maneuvering by the attorneys at the Department of Justice, I believe, should outrage the nation. Here in New Hampshire, we believe that a promise made should be a promise kept. Being true to that tradition, I am very grateful that this body is joining me in expressing our support for the military veterans and military retirees of this state. To those in Washington who have sided against our veterans, I have to say shame. To those who sit idly by while this battle is fought, I also say shame. Veterans from all over the country, military retirees will be gathering in Washington on February 12, led by colonel Bud Day, a veteran of World War II, Korea and Vietnam, who was a prisoner of war in Vietnam. This resolution will go with them as they take it to the U.S. Supreme Court. Today, we are unified and we are recognizing our common heritage and overcoming our differences, and we are joining thousands of New Hampshire veteran’s who are owed a lot more than flattery. They are owed the fulfillment of a promise made by our great nation for their selfless service. I just wanted to say thank you and this will help them substantially.

SENATOR BARNES (RULE #44): I rise to say thank you to Senator Cohen for bringing this forward. In my years in the Senate, Senator Cohen and I have agreed on two things now. One was the Larry Bird Memorial Highway, which is route 33 that some of you travel. Matter of fact, we were blessed to be able to put that sign up together, right, Senator Cohen? Today is the second time. I am very proud that Senator Cohen called me last night. As he called me last night, two minutes before the phone rang, it is rather funny how that happens, I was reading the January edition of the *VFW Magazine*. Just got through the article before Senator Cohen called me. I would like to read it if you would indulge me for just a couple of seconds, it is a short article:

“Court Rules Against Military Retirees”. “After years in the legal system, two military retirees who claimed they were promised free lifetime health care by military recruiters lost an appeal in federal court. The United States Court of Appeals for the Federal Circuit in Washington, D.C., ruled 9-4 on November 19 that although recruiters did make the promise, it was not a valid contract because the promise was not backed by law. At issue was the contention of the veterans – William Schism and Robert Reinlie, both of whom joined the military during World War II and served more than 20 years – that they would receive free healthcare for life after retirement. They and their attorney will seek a Supreme Court hearing. The dissenting judges wrote that “there was no doubt the government made an unambiguous offer...of course the service secretaries authorized promises in return for service; of course these military officers served until retirement in reliance; and of course there is a moral obligation to these men.” Moral, perhaps, but not legal. In writing the majority opinion, the judges noted that they “can do no more than hope Congress will make good on the promises made in good faith.”

Now I say to you, a couple of nights ago I heard President G.W. Bush, a compassionate President, offer \$15 billion to fight AIDS throughout Africa and the Caribbean and other countries. I thought that was a very generous offer of his. But you know something? I would like to see the President and congress take care of our veterans. Over the years, our veterans have been getting the short-shrift. With that, I will sit down and say thank you, Mr. President.

SENATOR BOYCE (RULE #44): I would just like to rise and thank the friends and relatives that might be listening today for participating in this exercise in Internet access. Thank you.

### **LATE SESSION RESOLUTION**

Senator Clegg moved that the Senate recess to the for the sole purpose of introducing legislation, referring bills to committee, and scheduling hearings, and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

### **Third Reading and Final Passage**

**SB 14**, relative to vacancies in county offices.

**SB 17**, relative to incompatible offices.

**SB 24**, relative to license revocations for DWI offenders under the age of 21.

**SB 26**, removing the penalty against teachers who fail to keep registers.

**SB 32**, relative to municipal budget recommendations.

**In recess to the Call of the Chair.**

**(Revised)**

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Andrew R. Peterson, r, Vice Chairman

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**RULES & ENROLLED BILLS**

Room 105-A SH \* 271-2111

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**TRANSPORTATION**

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**WAYS & MEANS**

Room 103 SH \* 271-3078

Lou D'Allesandro, d, Chairman

Robert E. Clegg, Jr., r, Vice Chairman

Robert K. Boyce, r

John T. Gallus, r

Bob Odell, r

**Out of Recess.****LATE SESSION****INTRODUCTION OF SENATE BILLS**

Senator Clegg moved that in accordance with the list in the possession of the Senate Clerk, Senate Bills numbered **60-SCR 2** inclusive shall be by this resolution read a first and second time by the therein listed titles.

**Adopted.****First and Second Reading and Referral**

03-0464

**SB 60-FN**, relative to voluntary certification of persons installing or servicing propane gas or heating oil equipment. (Green, Dist 6: Executive Departments and Administration)

03-0278

**SB 61**, relative to collective bargaining units at charter schools. (O'Hearn, Dist 12: Education)

03-0288

**SB 62**, relative to the application and enforcement of the state building code. (Clegg, Dist 14: Public Affairs)

03-0295

**SB 63-FN-A-L**, relative to establishing community reinvestment areas and granting business tax credits for investments in community reinvestment area projects. (O'Hearn, Dist 12; Odell, Dist 8; Clegg, Dist 14; Foster, Dist 13; Gallus, Dist 1; Peterson, Dist 11; J. Gilbert, Rock 83; Rodeschin, Sull 20; Mears, Coos 3; E. Smith, Ches 26; Mercer, Hills 59: Ways and Means)

03-0348

**SB 64-FN**, relative to updating the drought management plan. (Cohen, Dist 24; Estabrook, Dist 21; Green, Dist 6; Wall, Straf 72; Spang, Straf 72: Executive Departments and Administration)

03-0349

**SB 65**, relative to reducing certain mercury emissions. (Cohen, Dist 24: Environment)

03-0356

**SB 66-FN-A-LOCAL**, limiting the exemption from the meals and rooms tax for sales of alcoholic beverages by voluntary nonprofit organizations operating under one-day licenses from the liquor commission. (Cohen, Dist 24; Bridle, Rock 85: Ways and Means)

03-0382

**SB 67**, relative to a report on municipal water needs. (Estabrook, Dist 21; Green, Dist 6; Gatsas, Dist 16; Barnes, Dist 17; Cohen, Dist 24; Below, Dist 5; Spang, Straf 72; Wall, Straf 72; Musler, Straf 68: Environment)

03-0397

**SB 68**, authorizing electronic certification of educational credentials. (O'Hearn, Dist 12: Education)

03-0460

**SB 69-FN-A**, establishing an elementary or secondary teacher education and nursing education career incentive program within the postsecondary education commission and making an appropriation therefor. (D'Allesandro, Dist 20; Martel, Dist 18: Education)

03-0475

**SB 70**, creating the Great Bay Estuary district and making an appropriation therefor. (Green, Dist 6; Prescott, Dist 23; Keans, Straf 67; Newton, Straf 67: Environment)

03-0486

**SB 71-FN-A**, establishing a credit against the business profits tax or the business enterprise tax for health insurance premiums paid by certain businesses. (Larsen, Dist 15; Below, Dist 5; Estabrook, Dist. 21: Ways and Means)

03-0495

**SB 72**, relative to the regulation of title loans and payday loans. (D'Allesandro, Dist 20; Estabrook, Dist 21: Banks)

03-0510

**SB 73**, establishing a committee to study establishing enterprise zones in economically deprived or challenged communities. (Odell, Dist 8; Gallus, Dist 1; S. Harris, Sull 22; King, Coos 1; Elliott, Hills 42; J. Gilbert, Rock 83: Energy and Economic Development)

03-0564

**SB 74-FN-A-LOCAL**, increasing certain motor vehicle registration fees and appropriating the funds for local government records management programs. (D'Allesandro, Dist 20; Eaton, Dist 10; Clemons, Hills 62; Konys, Hills 65: Transportation)

03-0578

**SB 76**, relative to the process for nonrenewal of teacher contracts. (O'Hearn, Dist 12; Johnson, Dist 2; Green, Dist 6; S. L'Heureux, Merr 37; Alger, Graf 14; Francoeur, Rock 85; Giuda, Graf 13: Education)

03-0602

**SB 77**, relative to bond votes in school districts with official ballot voting procedures. (Flanders, Dist 7; Clegg, Dist 14; Below, Dist 5; Colcord, Merr 34: Internal Affairs)

03-0608

**SB 78-FN**, establishing the New Hampshire health care information council. (O'Hearn, Dist 12; Clegg, Dist 14; Flanders, Dist 7; Hunt, Ches 28; Kurk, Hills 48; Rogers Johnson, Rock 83: Public Institutions, Health and Human Services)

03-0612

**SB 79-FN-LOCAL**, relative to animal cruelty. (Roberge, Dist 9; Below, Dist 5; Estabrook, Dist 21; Barnes, Dist 17; Gatsas, Dist 16; P. Katsakiores, Rock 77; Kaen, Straf 72; Rous, Straf 72: Wildlife and Recreation)

03-0683

**SB 80**, relative to vocational education and the automotive technology curriculum. (Johnson, Dist 2: Education)

03-0702

**SB 81-FN**, granting a retirement system annuity to the surviving spouse of Carl Morin. (Gallus, Dist 1; Woodward, Coos 3; Poulin, Coos 3; Theberge, Coos 3; Guay, Coos 2: Insurance)

03-0778

**SB 82-FN**, relative to awards of fees and interest under workers' compensation. (Flanders, Dist 7; Gilman, Graf 9: Insurance)

03-0803

**SB 83**, relative to paralegals and legal assistants. (Roberge, Dist 9; Barnes, Dist 17; McEachern, Rock 86; Bruno, Hills 45: Judiciary)

03-0817

**SB 84-FN**, relative to eligibility for payment of medical benefits by the retirement system. (Larsen, Dist 15: Insurance)

03-0833

**SB 85-FN**, making certain revisions to the special education laws. (Estabrook, Dist 21: Education)

03-0958

**SB 86-FN**, relative to disclosure of certain information about child fatalities and near fatalities resulting from abuse and neglect, and relative to accreditation of the department of health and human services by the Council on Accreditation for Children and Family Services. (Martel, Dist 18; O'Hearn, Dist 12; Cohen, Dist 24; Estabrook, Dist 21; Below, Dist 5; Hallyburton, Hills 45; Alger, Graf 14; Emerton, Hills 48; Wallner, Merr. 40: Public Institutions, Health and Human Services)

03-1012

**SB 87**, relative to setback requirements for septage, biosolids, and short paper fibers. (Johnson, Dist 2: Environment)

03-1013

**SB 88-FN**, relative to testing and monitoring requirements at soil manufacturing and reclamation sites. (Johnson, Dist 2: Environment)

03-1014

**SB 89**, relative to encouraging the use of biosolids and short paper fiber in road construction projects. (Johnson, Dist 2: Environment)

03-1050

**SB 90-FN**, increasing the cap for relocation assistance for businesses in eminent domain proceedings. (Flanders, Dist 7; Gatsas, Dist 16; Below, Dist 5; Morse, Dist 22; C. Bouchard, Merr 39; M. Harrington, Straf 68; John Pratt, Ches 24; E. Smith, Ches 26; Wendelboe, Belk 29: Finance)

03-1052

**SB 91**, extending the committee to study eminent domain proceedings and adding certain duties. (Flanders, Dist 7; Gatsas, Dist 16; Below, Dist 5; Morse, Dist 22; C. Bouchard, Merr 39; John Pratt, Ches 24; E. Smith, Ches 26; Wendelboe, Belk 29; M. Harrington, Straf 68: Finance)

03-1055

**SB 92-FN**, regulating home improvement contractors. (D'Allesandro, Dist 20: Public Affairs)

03-1056

**SB 93**, relative to wrongful discharge from employment. (D'Allesandro, Dist 20: Judiciary)

03-1057

**SB 94-FN**, requiring criminal background checks for employees working in long-term care facilities and in home health care and for applicants for a license from the board of nursing. (D'Allesandro, Dist 20: Judiciary)

03-1058

**SB 95-FN-LOCAL**, relative to the development of workforce housing within municipalities. (Larsen, Dist 15; Gatsas, Dist 16; Cohen, Dist 24; Foster, Dist 13; Gallus, Dist 1; Almy, Graf 18; Spiess, Hills 47; Konys, Hills 65; Craig, Hills 50; J. Gilbert, Rock 83: Executive Departments and Administration)

03-1060

**SB 96-FN**, establishing a pharmacy assistance program for seniors and disabled persons. (Larsen, Dist 15; Barnes, Dist 17; Estabrook, Dist 21; Cohen, Dist 24; Foster, Dist 13; Gatsas, Dist 16; Pilliod, Belk 31; Emerton, Hills 48; Miller, Straf 72: Public Institutions, Health and Human Services)

03-1061

**SB 97**, limiting the liability of firefighters working for certain private firefighting units. (Clegg, Dist 14: Executive Departments and Administration)

03-0069

**SB 98-FN**, prohibiting telemarketers from contacting customers on a federal do-not-call registry. (Estabrook, Dist 21; Peterson, Dist 11; Gatsas, Dist 16; Sapareto, Dist 19; Barnes, Dist 17; Johnson, Dist 2; Cohen, Dist 24; Roberge, Dist 9; Below, Dist 5; Larsen, Dist 15, Kurk, Hills 48; Langley, Rock 88; R. Wheeler, Hills 48, N. Johnson, Straf 68; Wall, Straf 72: Public Affairs)

03-1064

**SB 99**, relative to high cost mortgage loans. (Flanders, Dist 7; Clegg, Dist 14; Johnson, Dist 2; D'Allesandro, Dist 20: Banks)

03-1065

**SB 101-FN**, relative to unemployment compensation. (Flanders, Dist 7; Bishop, Rock 74: Executive Departments and Administration)

03-1068

**SB 102-FN**, relative to the computation of tax on certain telecommunications services under the communications services tax. (D'Allesandro, Dist 20; Major, Rock 79: Ways and Means)

03-1070

**SB 103-FN**, establishing a credit against the business profits tax for contributions under a rental equity builder program. (Peterson, Dist 11; Foster, Dist 13; Martel, Dist 18; Green, Dist 6; Gallus, Dist 1; Dexter, Ches 27; Tahir, Hills 50: Ways and Means)

03-1071

**SB 104**, relative to state administration of medicaid benefits and services for individuals who are deaf or hard of hearing. (O'Hearn, Dist 12; Martel, Dist 18; Estabrook, Dist 21: Public Institutions, Health and Human Services)

03-0438

**SB 105-FN**, establishing state appliance and equipment energy efficiency standards. (Below, Dist 05; Gatsas, Dist 16; Cohen, Dist 24; Norelli, Rock 86; Kaen, Straf 72; P. Allen, Ches 27; Pitts, Rock 86: Energy and Economic Development)

03-0099

**SB 106**, relative to the operation of personal watercraft. (Johnson, Dist 2; Below, Dist 5; Odell, Dist 8; Rush, Merr 36; Stone, Rock 73; R. Cooney, Rock 76: Wildlife and Recreation)

03-0118

**SB 107-FN-LOCAL**, establishing a statewide education accountability system. (O'Hearn, Dist 12; Green, Dist 6; Flanders, Dist 7; Johnson, Dist 2; Rep Carson, Rock 75: Education)

03-0274

**SB 108-FN-LOCAL**, relative to charter schools. (Boyce, Dist 4: Education)

03-0286

**SB 109**, adopting the model Drug Dealer Liability Act. (Clegg, Dist 14; Boyce, Dist 4; Prescott, Dist 23; Gallus, Dist 1; Soltani, Merr 37, Hopper, Hills 48; Weyler, Rock 79; Giuda, Graf 13: Judiciary)

03-0290

**SB 110**, relative to small group health insurance coverage. (Prescott, Dist 23; Clegg, Dist 14; Eaton, Dist 10; Flanders, Dist 7; Morse, Dist 22; Rogers Johnson, Rock 83; M. Carter, Hills 44; Letourneau, Rock 77; R. Wheeler, Hills 48: Insurance)

03-0359

**SB 111**, relative to the standardized protocol for investigating and interviewing victims of child abuse and neglect and relative to the development of multi-disciplinary child abuse investigation teams. (Cohen, Dist 24; Foster, Dist 13; Larsen, Dist 15; Roberge, Dist 9; Gargas, Hills 46; J. Brown, Straf 67; B. Richardson, Ches 26: Judiciary)

03-0360

**SB 112-FN-LOCAL**, relative to state use of domestic steel. (Cohen, Dist. 24; Gallus, Dist 1; Shultis, Rock 86; Cloutier, Sull 22: Public Affairs)

03-0361

**SB 113**, changing the name of Plymouth state college to Plymouth state university. (Johnson, Dist 2; Gallus, Dist 1; Estabrook, Dist 21; E. Smith, Ches 26; Wendelboe, Belk 29; Thomas, Belk 31; Naro, Graf 15; Alger, Graf 14: Executive Departments and Administration)

03-0394

**SB 114**, implementing an unsafe school choice option for pupils attending schools which have been classified as persistently dangerous and authorizing the state board of education to implement a complaint process to address school safety and school violence issues in nonpublic schools. (O'Hearn, Dist 12; Johnson, Dist 2; Gile, Merr 38; Carson, Rock 75: Education)

03-0406

**SB 115**, establishing a commission to study implementing a recommendation of the New Hampshire estuaries project management plan and establishing the estuary alliance for sewerage treatment. (Prescott, Dist 23; Green, Dist 6; Cohen, Dist 24; Johnson, Dist 2; Boyce, Dist 4; Kears, Straf 67: Environment)

03-0498

**SB 116**, establishing a committee to study methods to prevent or reduce the high school dropout rate. (Cohen, Dist 24; Johnson, Dist 2; Green, Dist 6; Foster, Dist 13; Larsen, Dist 15; Naro, Graf 15; S. L'Heureux, Merr 37: Education)

03-0506

**SB 117-FN-A-LOCAL**, authorizing video lottery administered by a gaming oversight authority. (D'Allesandro, Dist 20; John Manning, Rock 76; Belanger, Rock 76; Buckley, Hills 56: Ways and Means)

03-0588

**SB 118-FN-A**, establishing a ladders to literacy program and making an appropriation therefor. (Estabrook, Dist 21; Below, Dist 5; Larsen, Dist 15; Cohen, Dist 24; Foster, Dist 13; Leone, Sull 21: Education)

03-0607

**SB 119**, relative to medical and hospital liability insurance. (O'Hearn, Dist 12; Flanders, Dist 7; Boyce, Dist 4; Roberge, Dist 9; Clegg, Dist 14; Martel, Dist 18; Johnson, Dist 2; Kenney, Dist 3; Prescott, Dist 23; Below, Dist 5; Peterson, Dist 11; Gallus, Dist 1; Green, Dist 6; Francoeur, Rock 85; Nordgren, Graf 17; Rogers Johnson, Rock 83; Mercer, Hills 59: Insurance)

03-0621

**SB 120**, relative to testimony by the state personnel in criminal cases. (Clegg, Dist 14; D'Allesandro, Dist 20; Welch, Rock 79; Tholl, Coos 2; Langley, Rock 88: Judiciary)

03-0814

**SB 121-FN**, relative to mortgage originator registration. (Larsen, Dist 15; Below, Dist 5; Sapareto, Dist 19; Mock, Carr 4; Langley, Rock 88; Wall, Straf 72: Banks)

03-0815

**SB 122**, relative to the regulation of first mortgage brokers. (Larsen, Dist 15; Sapareto, Dist 19; Below, Dist 5; Holden, Hills 48; Langley, Rock 88; Wall, Straf 72: Banks)

03-0831

**SB 123**, establishing a commission to study structures for increased voter education and improved enforcement of campaign practices laws. (Estabrook, Dist 21; Below, Dist 5; Cohen, Dist 24; D'Allesandro, Dist 20; Foster, Dist 13; Gallus, Dist 1; Larsen, Dist 15; Martel, Dist 18; Sapareto, Dist 19; Buckley, Hills 56; Dickinson, Carr 4: Internal Affairs)

03-0832

**SB 124**, establishing a family-community involvement program. (Estabrook, Dist 21; Below, Dist 5; Larsen, Dist 15; Leone, Sull 21; Naro, Graf 15: Education)

03-0845

**SB 126-FN-A**, exempting certain transfers of title from the real estate transfer tax. (Sapareto, Dist 19; Cohen, Dist 24; Gallus, Dist 1; Kenney, Dist 3; Estabrook, Dist 21; Odell, Dist 8; Green, Dist 6; Dupuis, Rock 77; Wiley, Rock 77; Elliott, Hills 42; Wendelboe, Belk 29: Public Affairs)

03-0856

**SB 127**, authorizing the sweepstakes commission to license multi-hall linked bingo for charitable purposes. (Martel, Dist 18; Green, Dist 6; Gallus, Dist 1; Dickinson, Carr 4; J. Brown, Straf 67; Belanger, Rock 76; Eaton, Ches 24: Ways and Means)

03-1003

**SB 128-FN**, transferring the bureau of vital records and health statistics from the department of health and human services to the department of state. (Martel, Dist 18; Kurk, Hills 48; Major, Rock 79: Executive Departments and Administration)

03-1051

**SB 129**, relative to the board of tax and land appeals and eminent domain cases. (Flanders, Dist 7; Gatsas, Dist 16; Below, Dist 5; Morse, Dist 22; Bouchard, Merr 39; M. Harrington, Straf 68; J. Pratt, Ches 24; Wendelboe, Belk 29: Finance)

03-1054

**SB 130-FN-LOCAL**, relative to county departments of corrections. (Clegg, Dist 14; D'Allesandro, Dist 20; Martel, Dist 18; Weyler, Rock 79; Tholl, Coos 2: Executive Departments and Administration)

03-1069

**SB 131**, establishing a committee to study promoting the establishment of free clinics for uninsured and underinsured persons. (Peterson, Dist 11; Martel, Dist 18; Foster, Dist 13; Larsen, Dist 15; Bruno, Hills 45; Naro, Graf 15; Craig, Hills 50; J. Pratt, Ches 24: Public Institutions, Health and Human Services)

03-1072

**SB 132-FN-A**, extending the Parents as Teachers program in Sullivan county and making an appropriation therefor. (Odell, Dist 8; Estabrook, Dist 21; O'Hearn, Dist 12; Rodeschin, Sull 20: Education)

03-1073

**SB 133**, relative to amending the charter of Dartmouth college. (Peterson, Dist 11; Below, Dist 5; Hess, Merr 37; J. Gilbert, Rock 83; Nordgren, Graf 17: Public Institutions, Health and Human Services)

03-1074

**SB 134**, relative to the regulation of real estate brokers by the real estate commission. (Gallus, Dist 1; Roberge, Dist 9; Odell, Dist 8; Dickinson, Carr 4; Bruno, Hills 45: Public Affairs)

03-1075

**SB 135**, relative to hotel keeper liability for personal care services. (Gallus, Dist 1; Johnson, Dist 2; Dickinson, Carr 4; H. Richardson, Coos 2; King, Coos 1: Insurance)

03-1077

**SB 136**, relative to liability for hazardous materials accidents. (Prescott, Dist 23; Welch, Rock 79: Environment)

03-1086

**SB 137-A**, requiring the state to construct a non-toll bridge connecting the towns of Merrimack and Litchfield and making an appropriation therefor. (Martel, Dist 18: Transportation)

03-1095

**SB 138-FN**, clarifying the exemption from the interest and dividends tax for distributions from qualified tuition savings programs. (Larsen, Dist 15; Peterson, Dist 11; Below, Dist 5: Ways and Means)

03-1096

**SB 139**, relative to exhibition fees charged by the boxing and wrestling commission. (Clegg, Dist 14: Public Affairs)

03-1101

**SB 140-FN**, establishing an optional renewal period for licenses to carry a pistol or revolver. (Prescott, Dist 23; Itse, Rock 80: Judiciary)

03-1102

**SB 141-FN-A-LOCAL**, relative to fire service aid payments to the city of Concord and making an appropriation therefor. (Larsen, Dist 15; Gile, Merr 38; Daniels, Merr 38; MacKay, Merr 39; DeJoie, Merr 39; Brueggemann, Merr 40: Ways and Means)

03-1105

**SB 142-FN**, relative to advertisements on utility poles and highway signs. (Johnson, Dist 2; Introne, Rock 75: Transportation)

03-1107

**SB 143**, establishing a commission to study and review the regulation of the building trades. (Prescott, Dist 23; Larsen, Dist 15: Public Affairs)

03-1110

**SB 144-FN**, relative to the lease agreement between the department of regional community-technical colleges and Pease development authority. (Johnson, Dist 2: Ways and Means)

03-1111

**SB 145-FN-A**, relative to the duties of the board of trustees of the department of regional community-technical colleges. (Johnson, Dist 2: Executive Departments and Administration)

03-1112

**SB 146**, relative to eligible costs for training grants in the job training program for economic growth. (Johnson, Dist 2; Clegg, Dist 14: Energy and Economic Development)

03-1115

**SB 147**, establishing a committee to study alternative strategies to relieve the property tax burden on private educational institutions and to encourage scholarships to New Hampshire students. (D'Allesandro, Dist 20; Martel, Dist 18: Ways and Means)

03-1117

**SB 148-FN**, relative to the regulation of water treatment equipment installers by the plumber's board. (Prescott, Dist 23: Public Affairs)

03-1118

**SB 149-FN**, establishing criminal penalties for the use of a credit card scanning device or reencoder to defraud. (Morse, Dist 22; Below, Dist 5; Rausch, Rock 77; Rep Nedeau, Belk 30: Judiciary)

03-1119

**SB 151-FN-A-LOCAL**, relative to the taxation of telecommunications poles and conduits. (Green, Dist 6: Energy and Economic Development)

03-1124

**SB 152**, relative to health insurance coverage for prosthetic devices. (Clegg, Dist 14: Insurance)

03-1126

**SB 153**, adopting the nurse licensure compact. (Martel, Dist 18, Peterson, Dist 11; Sapareto, Dist 19; D'Allesandro, Dist 20: Public Institutions, Health and Human Services)

03-1128

**SB 154**, relative to landlord access to rental properties. (Sapareto, Dist 19: Public Affairs)



03-0684

**SB 155**, establishing a commission to study issues relative to large groundwater withdrawals. (Johnson, Dist 2; R. Cooney, Rock 76: Environment)

03-1116

**SB 156**, relative to law enforcement officer's collective bargaining. (D'Allesandro, Dist 20: Public Affairs)

03-1122

**SB 157**, establishing a committee to study the vesting of development rights. (Green, Dist 6: Executive Departments and Administration)

03-1114

**SB 158**, adding a county commissioner member to the New Hampshire retirement system board of trustees. (Peterson, Dist 11; Odell, Dist 8, King, Coos 1, Nedeau, Belk 30: Insurance)

03-0103

**SB 159-FN**, relative to milfoil and other exotic aquatic weeds. (Johnson, Dist 2; Below, Dist 5; Leach, Hills 42; Leone, Sull 21; French, Merr 34: Environment)

03-0687

**SB 160-FN-A**, making a capital appropriation to continue construction of the vocational center in Nashua. (O'Hearn, Dist 12; Foster, Dist 13; Mercer, Hills 59; McHugh, Hills 61; Balboni, Hills 59; Lasky, Hills 65; Konys, Hills 65: Education)

03-1103

**SB 161**, relative to procedures in eminent domain proceedings. (Flanders, Dist 7; Gatsas, Dist 16; Below, Dist 5; Morse, Dist 22; C. Bouchard, Merr 39; M. Harrington, Straf 68; J. Pratt, Ches 24; Wendelboe, Belk 29: Finance)

03-1121

**SB 162**, establishing a committee to study water resources. (Green, Dist 6; Prescott, Dist 23; Estabrook, Dist 21; Cohen, Dist 24: Environment)

03-1129

**SB 163-FN**, relative to the procedures of the health services planning and review board. (Flanders, Dist 7; Johnson, Dist 2; Kenney, Dist 3; Estabrook, Dist 21: Public Institutions, Health and Human Services)

03-1131

**SB 164**, relative to the unauthorized use of a financial institution's name. (Flanders, Dist 7; Reardon, Merr 39: Banks)

03-1132

**SB 165**, relative to the voluntary dissolution of nondepository trust companies. (Flanders, Dist 7: Banks)

03-1134

**SB 166**, establishing a committee to study methods for the state to create incentives for school districts to provide mentoring for beginning teachers. (Estabrook, Dist 21; Green, Dist 6; O'Hearn, Dist 12; Johnson, Dist 2; Larsen, Dist 15; Foster, Dist 13; Below, Dist 5; Leone, Sull 21; Naro, Graf 15: Education)

03-1135

**SB 167**, relative to indoor air quality assessment in public school buildings. (Estabrook, Dist 21; Below, Dist 5; Larsen, Dist 15: Environment)

03-1136

**SB 168**, allowing school boards to adjourn to nonpublic session to consider pupil disciplinary matters. (Estabrook, Dist 21: Judiciary)

03-1137

**SB 169**, relative to frivolous actions against the state concerning state construction projects. (Clegg, Dist 14; Morse, Dist 22; Dickinson, Carr 4; E. Smith, Ches 26; Letourneau, Rock 77; Packard, Rock 75: Transportation)

03-1138

**SB 170**, relative to Public Service of New Hampshire. (Clegg, Dist 14; Green, Dist 6; Odell, Dist 8: Energy and Economic Development)

03-1139

**SB 171**, regulating activities which may cause the introduction and spread of infectious wildlife diseases. (Clegg, Dist 14: Wildlife and Recreation)

03-1141

**SB 172-FN**, increasing certain fees charged by the secretary of state. (Martel, Dist 18: Internal Affairs)

03-1142

**SB 173**, relative to certain historical and recreational facilities. (Johnson, Dist 2: Transportation)

03-1143

**SB 174**, relative to scheduled permanent impairment awards under workers' compensation. (Johnson, Dist 2: Insurance)

03-1145

**SB 176**, relative to standards for plats recorded in the registry of deeds. (Johnson, Dist 2: Public Affairs)

03-1146

**SB 177**, relative to credit unions. (Flanders, Dist 7; DeStefano, Merr 41: Banks)

03-1147

**SB 178**, relative to guaranty funds. (Prescott, Dist 23; Roberge, Dist 9; Johnson, Dist 2; Green, Dist 6: Banks)

03-1148

**SB 179-FN-A**, relative to positions in the banking department. (Flanders, Dist 7; Hunt, Ches 28: Banks)

03-1149

**SB 180**, making certain changes in the banking laws. (Flanders, Dist 7; DeStefano, Merr 41: Banks)

03-1150

**SB 181**, relative to investigations by and license revocation appeals to the board of trust company incorporation. (Flanders, Dist 7; DeStefano, Merr 41: Banks)

03-1151

**SB 182**, relative to releasing information from motor vehicle records. (Boyce, Dist 4; Dumaine, Rock 75: Transportation)

03-1152

**SB 183-FN**, relative to membership in the retirement system for part-time attorneys general. (Clegg, Dist 14; Rogers Johnson, Rock 83: Insurance)

03-1154

**SB 184**, relative to reinsurance. (Johnson, Dist 2: Insurance)

03-1155

**SB 185**, relative to reducing mercury in automobiles. (Cohen, Dist 24: Environment)

03-1144

**SB 186-FN**, relative to sale of tobacco products. (Johnson, Dist 2: Interstate Cooperation)

03-1156

**SB 187**, relative to designating local emergency management directors. (Kenney, Dist 3; Clegg, Dist 14: Public Affairs)

03-1157

**SB 188-LOCAL**, establishing a commission to study improving the enforcement of traffic laws in high traffic areas. (Martel, Dist 18: Transportation)

03-1158

**SB 189**, relative to certain automobile accidents. (Martel, Dist 18: Insurance)

03-1159

**SB 190**, relative to community living facilities. (O'Hearn, Dist 12; Batula, Hills 58: Public Institutions, Health and Human Services)

03-1160

**SB 191**, creating a committee to study establishing a prescription drug program for the elderly and disabled. (Martel, Dist 18; P. Katsakiores, Rock 77; Ruffner, Rock 83: Public Institutions, Health and Human Services)

03-1161

**SB 192-FN**, relative to domicile for persons needing assistance. (Martel, Dist 18: Public Affairs)

03-1162

**SB 193**, extending the report date for the commission on the education of the deaf and hard of hearing in New Hampshire. (Martel, Dist 18: Public Institutions, Health and Human Services)

03-1163

**SB 194**, establishing a committee to study certain issues relative to large groundwater withdrawals and their effect on Darrah Pond in Litchfield. (Martel, Dist 18: Environment)

03-1164

**SB 195**, combining the career incentive program and the nursing leveraged scholarship loan program within the department of postsecondary education. (O'Hearn, Dist 12; D'Allesandro, Dist 20: Education)

03-1165

**SB 196**, establishing a committee to study the inspection and fees for sanitary transportation of seafood. (Prescott, Dist 23; Moore, Rock 84: Transportation)

03-1166

**SB 197-FN**, relative to extended unemployment benefits. (Cohen, Dist 24; Larsen, Dist 15; Mears, Coos 3: Insurance)

03-1167

**SB 198**, relative to a certain highway sign in Concord. (Flanders, Dist 7; Kenney, Dist 3; Eaton, Dist 10; Clegg, Dist 14: Transportation)

03-1168

**SB 199**, revising the nurse practice act. (Below, Dist 5; Peterson, Dist 11, Emerton, Hills 48; Elliott, Hills 42; Patten, Carr 7; French, Merr. 24: Executive Departments and Administration)

03-1170

**SB 201**, establishing a committee to study insurance practices relative to homeowner's insurance. (Larsen, Dist. 15; Estabrook, Dist 21; Below, Dist 5; Cohen, Dist 24; Foster, Dist 13; Roberge, Dist 9; Francoeur, Rock 85; DeStefano, Merr 41; Kathleen Taylor, Straf 70: Insurance)

03-1171

**SB 202-FN-A**, relative to funding for kidney dialysis patients and making an appropriation therefor. (Larsen, Dist 15; Seldin, Merr 39; MacKay, Merr. 39; E. Blanchard, Merr 38: Public Institutions, Health and Human Services)

03-1172

**SB 203-FN**, requiring the New Hampshire court system to automate mental health records to comply with federal law prohibiting possession of firearms by certain persons. (Larsen, Dist 15; Foster, Dist 13; Pepino, Hills 51; Hunter, Hills 48; Pilliod, Belk 31: Judiciary)

03-1175

**SB 204**, relative to bail recovery agents. (Prescott, Dist 23: Judiciary)

03-1176

**SB 205-FN**, authorizing the state to accept the title of the dam and dikes at Smith Pond, Enfield, New Hampshire. (Below, Dist 5; Scovner, Graf 17; Akins, Graf 18: Environment)

03-1178

**SB 206-FN**, relative to the registration of OHRVs used as grooming equipment for cross country ski trails. (Below, Dist 5: Wildlife and Recreation)

03-1179

**SB 207**, relative to transactions exempt from the consumer protection act. (Below, Dist 5; D'Allesandro, Dist 20; Larsen, Dist 15; Spiess, Hills 47: Banks)

03-1180

**SB 208-FN**, establishing a property tax cap and abatement program. (Below, Dist 5; Cohen, Dist 24; Estabrook, Dist 21; Foster, Dist 13; Larsen, Dist 15; Burling, Sull 19: Ways and Means)

03-1181

**SB 209**, relative to permissible campaign contributions by business organizations and labor unions. (Below, Dist 5; Cohen, Dist 24; Estabrook, Dist 21; Foster, Dist 13; Larsen, Dist 15; Flanagan, Rock 78; Davis, Merr 36; Konys, Hills 65: Internal Affairs)

03-1183

**SB 210**, relative to the administrative procedures of the real estate commission. (Below, Dist 5; Gatsas, Dist 16; Flanders, Dist 7; Patten, Carr 7; Mercer, Hills 59; Wall, Straf 72: Executive Departments and Administration)

03-1184

**SB 211**, relative to the expungement of DNA records and multiple qualifying convictions. (Below, Dist 5; Flanders, Dist 7; D'Allesandro, Dist 20; Patten, Carr 7; Wall, Straf 72: Judiciary)

03-1186

**SB 212**, requiring fiscal impact statements for interim administrative rules and prohibiting agencies from requiring by rule the submission of social security numbers. (Below, Dist 5; Larsen, Dist 15; Flanders, Dist 7; D'Allesandro, Dist 20; Patten, Carr 7; Wall, Straf 72: Executive Departments and Administration)

03-1187

**SB 213**, allowing municipalities to adopt a volunteer firefighter property tax credit. (Below, Dist 5; Scovner, Graf 17; Benn, Graf 17; Diamond, Graf 17; Nordgren, Graf 17: Ways and Means)

03-1188

**SB 214-FN-A**, establishing new positions in the department of health and human services and making an appropriation therefor. (Below, Dist 5; D'Allesandro, Dist 20: Finance)

03-1189

**SB 215-FN**, relative to the use of prerecorded telephone messages for political advocacy. (Below, Dist 5; Larsen, Dist 15; Cohen, Dist 24; Estabrook, Dist 21; Foster, Dist 13; D'Allesandro, Dist 20; Spiess, Hills 47; Dokmo, Hills 47: Interstate Cooperation)

03-1191

**SB 216-FN-A**, relative to the developmental services priority waiting list and making an appropriation therefor. (Below, Dist 5; Larsen, Dist 15; D'Allesandro, Dist 20; Cohen, Dist 24; Estabrook, Dist 21; Foster, Dist 13: Public Institutions, Health and Human Services)

03-1196

**SB 217-FN**, relative to the calculation of average daily membership in residence for the purpose of calculating the cost of an adequate education. (Below, Dist 5; Estabrook, Dist 21; Foster, Dist 13; Larsen, Dist 15; Cohen, Dist 24: Finance)

03-1197

**SB 218**, establishing a study committee to examine child custody and support laws and practices in New Hampshire. (Below, Dist 5: Judiciary)

03-1199

**SB 219**, relative to superior court notice to health care regulatory boards of felony convictions of health care providers. (Peterson, Dist 11: Judiciary)

03-1200

**SB 220**, repealing the professional malpractice claims panel. (Peterson, Dist 11: Judiciary)

03-1201

**SB 221-FN**, relative to the offense of obstructing government administration by the use of simulated legal process. (Peterson, Dist 11: Judiciary)

03-1202

**SB 222-FN-A**, relative to motor vehicle fees. (Clegg, Dist 14; D'Allesandro, Dist 20; Packard, Rock 75; Letourneau, Rock 77: Transportation)

03-1203

**SB 223-FN-A**, relative to fees for copies of motor vehicle records and relative to the fire standards and training and emergency medical services fund. (Clegg, Dist 14; Eaton, Dist 10; D'Allesandro, Dist 20; Packard, Rock 75; Letourneau, Rock 77; Chandler, Carr 4; Burling, Sull 19; Currier, Merr 34: Insurance)

03-1062

**SJR 1** approving certain uses of Weeks state park. (Gallus, Dist 1: Wildlife and Recreation)

03-0271

**SCR 1**, urging a study of the operating efficiency of state government. (Boyce, Dist 4; Prescott, Dist 23; Flanders, Dist 7; Roberge, Dist 9; Johnson, Dist 2; Rogers Johnson, Rock 83; Alger, Graf 14; Gilman, Graf 9; Quandt, Rock 83: Internal Affairs)

03-1087

**SCR 2**, urging the United States Congress to act to rectify the science, research funding, and restrictions governing the Northeast multispecies fishing industry and its impact on New Hampshire fishermen. (Cohen, Dist 24; Gillick, Rock 85; Norelli, Roc 86; Kelley, Rock 85; Pantelakos, Rock 86: Wildlife and Recreation)

### HOUSE MESSAGE

The House of Representatives has passed a Bill with the following title, in the passage of which it asks the concurrence of the Senate:

**HB 171**, establishing a commission to assess the operating efficiency of state government.

### INTRODUCTION OF HOUSE BILL

Senator Clegg offered the following Resolution:

**RESOLVED**, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered 171 shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 171**, establishing a commission to assess the operating efficiency of state government. Executive Departments and Administration.

Senator Clegg moved that the Senate adjourn.

**Adopted.**

**Adjournment.**

*February 6, 2003*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer. What happened on Saturday is a reminder that even in the midst of important issues, what matters at the end of the day is people. That is the thing that in the work that you do, and in the work that I do and in the work that anybody does, we need to hold on to. A person's ethics and values emerge from that delicate balance between the corporate long-term wisdom of our society and culture on the one hand, and the real life

ality communities perish; without personal morality their survival has no value". The ethics platform upon which you choose to stand will determine if what you build here for us is a spacious, airy and light greenhouse, in which things can grow and blossom, or a small, sturdy bomb shelter, which may be cramped but within which we can all feel safe. Your challenge is to figure out which to do and how to do it, and it is your ethics, values and priorities that determine the floor plan. Build well, my friends.

Let us pray:

*Fill in, O Lord, the cracks and chinks and fissures of our vision and our lives with the firm mortar of Your priorities and make us bold entrepreneurs of ethics, that what is built in this place by these good people may be of a quality that transcends our narrow wants and that strengthens and draws forth from us the very best that is there within. Amen.*

Senator Boyce led the Pledge of Allegiance.

### New Hampshire General Court Concord, New Hampshire

#### JOINT DECLARATION

In Honor of the Fallen Heroes of the Space Shuttle Columbia

**WHEREAS**, the citizens of New Hampshire and the entire country mourn the passing of the courageous men and women of the Space Shuttle Columbia including: Colonel Rick D. Husband, Commander William C. McCool, Lieutenant Colonel Michael P. Anderson, Captain David M. Brown, Dr. Kalpana Chawla, Commander Laurel Clark, and Colonel Ilan Ramon of the Israeli Air Force; and

**WHEREAS**, the passing of these dedicated scientific space travelers sadly reminds the citizens of New Hampshire of the tragic loss of Concord High School teacher, Christa McAuliffe, and her fellow crew members aboard the Space Shuttle Challenger, seventeen years ago; and

**WHEREAS**, we send our sincere sympathies to the families of the fallen seven of the Space Shuttle Columbia, and wish them Godspeed; and

**WHEREAS**, we honor the selfless dedication and passion exhibited by the crew of the Space Shuttle Columbia as they put their lives in harms way to discover new and critical scientific information which will advance and better the lives of all citizens; and

**WHEREAS**, we pause to honor and recognize the tremendous contributions of those who serve our country as space explorers of the vast celestial frontier, and

**WHERE AS**, we offer our heartfelt thanks to them for their service to our country and for the ultimate sacrifice of their lives, now therefore be it

**DECLARED**, by the New Hampshire General Court that this legislative body hereby recognizes and honors the contributions and achievements of the crew of the Space Shuttle Columbia and of all the courageous men and women who have sacrificed their lives in pursuit of the scientific exploration of outer space for the betterment of mankind.

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THOMAS R. EATON  
SENATE PRESIDENT

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GENE CHANDLER  
SPEAKER OF THE HOUSE

## INTRODUCTION OF GUESTS

### MOTION TO VACATE

Senator D'Allesandro moved to vacate **SB 63-FN-A-L**, relative to establishing community reinvestment areas and granting business tax credits for investments in community reinvestment area projects, from the Ways and Means Committee to the Energy and Economic Development Committee.

**Adopted.**

**SB 63-FN-A-L is vacated to the Energy and Economic Development Committee.**

### COMMITTEE REPORTS

**SB 48**, exempting housing for older persons from certain age discrimination laws. Executive Departments and Administration Committee. Ought to pass, Vote 5-0. Senator Cohen for the committee.

SENATOR COHEN: Thank you, Mr. President. Senate Bill 48 will resolve competing Human Rights Commission rules relative to age discrimination and will bring New Hampshire statutes into line with their legislative intent and federal law. RSA 354-A:15 currently allows owners and developers of senior living communities to exclude children under 18 from the facility "if" the housing is designed to meet the needs of older persons. Human Rights Commission rule 302 also allows for the creation of such communities; however, Human Rights Commission rule 303 says a developer or owner "cannot" discriminate on the basis of age as long as any one unit is occupied by an individual under 55 years old. Testimony from the Commission as well as municipalities, developers, owners and lawyers needing to advise clients, was that these competing rules are causing confusion and slowing critical housing development for seniors. Passage of SB 48 will preserve the ability of housing for older persons to meet the requirements of 354-A:15 while retaining the flexibility to allow younger spouses, caretakers and adult dependent children to reside in the home. The committee unanimously voted ought to pass and urges the Senate to do the same. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 31**, changing the name of the joint committee on legislative facilities and codifying the powers and duties of the committee. Internal Affairs Committee. Inexpedient to legislate, Vote 4-1. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move SB 31 inexpedient to legislate. Senate Bill 31 sought to codify the 23 prior session laws relating to the Legislative Facilities Committee as well as to establish a means of employee address. The means of address included a requirement to provide legal counsel to any affected employee. It also sought to remove from the Senate President's and House Speaker's offices, the ability to determine who shall be employed. Senate Bill 31 attempts to fix a problem that doesn't exist. I ask your support of the motion of inexpedient to legislate. Thank you.

SENATOR D'ALLESANDRO: I wish to speak against the motion. The Legislative Facilities Committee was first passed into legislation in 1973. At that time, I was a member of the House of Representatives. The original reason for this piece of legislation was to take a building across the



street, which was an abandoned building, which the state used for storage, and to create the Legislative Office Building. Hence the "facilities" title went with that piece of legislation. The role of this committee has expanded over the last 25 years. It really isn't the Legislative Facilities Committee anymore. It is truly a legislative management committee. Hence, the desire to change the name from Legislative Facilities to Legislative Management. If there were parts of this piece of legislation that aren't acceptable, extract them from the piece of legislation and put something together that is acceptable to the majority. The authorization for this committee appears in thirty-three different places in the session laws and in the RSA's. Codification would just take what has been done and put it in one spot where we could find it. Currently, we have to refer to session laws as well as statute, in order to find out what the duties and responsibilities are because as we added a new facility, we created a new law. For example, when we put the parking garage together, a law was created to oversee the parking garage. As we needed new facilities, we did this. So this was an attempt to take what we have done over the last 25 years and put it in one spot where we could reference it. As I have said, if there are parts of this that are unacceptable, extrapolate them from the bill. If it is not acceptable fine, but at least make an effort to put something where we can find it without having to go to thirty-three different spots. Thank you, Mr. President.

SENATOR LARSEN: I rise to support the discussion opened by Senator D'Allesandro. In sitting in Internal Affairs it became very clear that in fact it would make sense to rename the Legislative Facilities Committee to a name more appropriate, being Legislative Management. It would make sense to put the statutes together in one place rather than to spread throughout various places because of history. What I believe... I would also like to point out is that what we now have is a procedure where we must vote on inexpedient to legislate, not leaving the Senate under these new procedures that we are operating under. Not leaving the Senate the option to amend a committee report and in fact, codify these in one place in the statutes and remove the offending parts, which are perhaps the employee means of address on page three, lines 11-16. If we had that process that we could amend on the floor, a committee report, we could have a more full discussion and the Senators each could make their decision. As a result, we are limited in what we can do, and all that we can do, if we want to present a correction to this, is either to refer it to committee or to vote down inexpedient to legislate, which would allow us then to amend. I suspect that this is going to be agreed upon that it is inexpedient to legislate and we will be again, constricted in what we can do, when this is a very simple correction, that I think a lot of people would agree on and would improve legislative operations and make more appropriate the title, that we truly are legislatively managing more than just a facility, we are in legislative facilities managing the entire legislative process. I point that out and I don't make any further motions. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 30-FN**, relative to dissemination of false statements about candidates. Judiciary Committee. Inexpedient to legislate, Vote 4-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President, I move SB 30 inexpedient to legislate. This bill seeks to address a serious concern, the growing trend of freewheeling negative, and worse still, patently false information that is circulated about candidates in political campaigns today.

While the committee shares this concern it believed the remedy the bill posed could lead to other problems. Senate Bill 30 sought to make any person who knowingly publishes a false statement about a candidate guilty of a misdemeanor. First, other remedies do exist to address these matters. A candidate falsely attacked can sue for slander or libel and there are criminal statutes on the books for publication of false information about people, RSA 644:11. However, even if these other remedies did not exist the committee's concerns would remain because the law could impose a chilling effect on our most valued First Amendment right – freedom of political speech. The Judiciary Committee asks your support for the motion of inexpedient to legislate. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in opposition to the motion. First of all, running for public office is a very difficult situation. We make difficult judgements and we realize that we expose ourselves by doing this. If one is to register a slander case, the level of intensity is so high in proving that case because you are a public official, that relatively few people will accept those cases, and if indeed they are accepted, getting an adjudication in a positive fashion is extremely difficult. What I have found in my 30 years of politics is the number and the flagrant abuse of slander is becoming pervasive throughout our society. I see more and more of it as each campaign evolves. It just seems to me that if (A) our desire is to get more people involved in politics, to get younger people involved in politics and to get politics in a more acceptable vein, then we have to do something that says when someone says something that they know is absolutely a lie, a falsehood, that there has to be a price to be paid. This was an attempt to do that. The level of animosity that is being exercised in campaigns has reached an all-time high. I think that it is discouraging for people who want to get involved in the process. These personal attacks are very demeaning. They are not only affecting the individual, but they affect the individual's family. I think that is wrong. It is absolutely wrong. It is something that we should attempt – this was an attempt to begin that correction. I know that each and everyone of us involved in the process faces this, at least on a biennial basis when we run for election, and we have to deal with it in our own way. This was an attempt to try to correct what I think is a situation that is becoming more and more pronounced as the years go on. Thank you, Mr. President.

SENATOR BELOW: Senator D'Allesandro, if I think that this bill merits some further consideration, do you think that it would be appropriate to vote against the committee report of inexpedient to legislate so that we could rerefer this to the committee and think about this a little bit more?

SENATOR D'ALLESANDRO: Yes. Thank you, Senator.

SENATOR BELOW: Thank you.

### **Committee report of inexpedient to legislate is adopted.**

**SB 52**, relative to a voluntary certification program for police dogs and handlers. Public Affairs Committee. Ought to pass, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. Senate Bill 52 has a voluntary certification program for police dogs to the duties of the police Standards and Training Council. Over the years, local police departments have requested of the council, a canine training and certification program for police dogs and handlers in the state. Currently, New Hampshire has between 60-70 police canines working in local police departments throughout the state, tracking lost persons, escaped prisoners,

apprehending criminals, sniffing out bombs, narcotics and buried bodies. Instituting this program would save police officers from having to travel to Boston, where currently...they now go down to the big city of Boston, for training programs and help keep with the demand for new and replacement police dogs. The committee recommends ought to pass.

**SENATOR GATSAS:** Senator Barnes, would you believe that the only nationally certified dog in New Hampshire comes from the town of Hudson and that nationally certified dog in Hudson, had the opportunity to get certified by chasing one of the Senators in this chamber?

**SENATOR BARNES:** Senator Gatsas, if you tell me that you believe that, why would I doubt it?

**SENATOR GATSAS:** I just want to see that canine.

**SENATOR BARNES:** Senator Gatsas, might I remind you that a Senator brought a canine in here a few years ago and we had to put a new carpet in after he left.

**SENATOR GATSAS:** Thank you, Senator.

**Adopted.**

**Ordered to third reading.**

**SB 18-FN**, relative to vehicle stops at railroad grade crossings. Transportation Committee. Ought to pass, Vote 3-0. Senator Kenney for the committee.

**SENATOR KENNEY:** Just to clarify something, this is a Transportation bill not a canine bill. I move that SB 18 ought to pass. Senate Bill 18 requires a driver of a school bus to stop at a railroad grade crossing unless exempt by the order of the commission of transportation. An overwhelming majority of the states have passed similar legislation requiring their buses to stop at all times. Currently, New Hampshire law only requires such stops when school buses are carrying children. This bill would help to put in place, additional safety precautions and consistently display to the public, and the law enforcement officials, that the school buses are operating under safe conditions with or without school children aboard. I encourage the Senate to support the unanimous decision of the committee. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

### **RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills ordered to third reading be by this resolution read a third time and all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

### **LATE SESSION**

#### **Third Reading and Final Passage**

**SB 48**, exempting housing for older persons from certain age discrimination laws.

**SB 52**, relative to a voluntary certification program for police dogs and handlers.

### ANNOUNCEMENTS

SENATOR BOYCE (RULE #44): I would like to welcome the friends and relatives who listened in last week on our fancy new Internet connection. I actually did have both friends and relatives that did make it. A couple of them, after the fact. I would like to welcome them again. Thank you.

SENATOR SAPARETO (RULE #44): On Monday, the twelfth, the House and Senate have both drafted resolutions to honor a teacher, Mr. Bruce Lorden who is a veteran sixth grade social study teacher at the Frances C. Richmond Middle School. This will be at noontime on the twelfth. Mr. Lorden has faithfully, for a number of years, been the only teacher in that middle school to bring children to a central spot, which is allocated as a place to recite the Pledge of Allegiance for those children who want to do so. He has been running against the grain and he stops at each classroom on the way and invites those students, in the spirit of HB 1446, which was passed last year, and in light of the events since September 11 we would like to recognize him for his efforts and for all of the work that he has done, because he has done this faithfully for years and it is not an easy thing to do in a situation that he is in. We would like to invite all Senators and Representatives who are interested to come honor this gentleman for his work. Thank you.

### RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, referring bills to committee, receiving House Messages, and scheduling hearings, and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

**In recess to the Call of the Chair.**

**Out of Recess.**

### INTRODUCTION OF SENATE BILLS

Senator Clegg moved that in accordance with the list in the possession of the Senate Clerk, Senate Bills numbered **224 - 227** inclusive shall be by this resolution read a first and second time by the therein listed titles.

**Adopted.**

### First and Second Reading and Referral

03-0115

**SB 224-FN-A-LOCAL**, relative to the education property tax and needs-based targeted education aid and reducing the rates of the business enterprise tax and the business profits tax. (Sapareto, Dist 19; Gallus, Dist 1; Barnes, Dist 17; Weyler, Rock 79: Ways and Means)

03-0445

**SB 226-LOCAL**, increasing the homestead exemption. (Sapareto, Dist 19; Odell, Dist 8; Cohen, Dist 24; Below, Dist 5; Dupuis, Rock 77; Wiley, Rock 77; Dickinson, Carr 4; Giuda, Graf 13; Morris, Rock 84: Executive Departments and Administration)

03-1182

**SB 227**, relative to the board of occupational therapy, the board of respiratory care practice, the board of speech-language therapists, the board of athletic trainers practice, the board of physical therapy practice, and the board of directors of the office of licensed allied health professionals. (Below, Dist 5; Patten, Carr 7; Wall, Straf 72: Executive Departments and Administration)

**LATE SESSION**

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*February 13, 2003*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

The easiest and quickest way to find out what a person actually believes and values is to study his or her checkbook. In a few minutes the Governor will place his budget ideas at the beginning of the legislative assembly line. It will be your privilege to take it from there and to craft something that will reveal to all what your values are and what you believe ours should be. We did not elect you to be CPA's. We elected you to be leaders. And so, all through this budget development process, please remember that it is not only a question of how to most efficiently crunch the numbers that should drive you, for the budget is a whole lot more than that. The budget you build for us starting today – and how openly and respectfully you go about that process – will be your creed, your statement of belief concerning how we can best care about and care for one another.

Let us Pray:

*Save us always, gracious God, from confusing the value of money with the value of people. Endow with just the right mixture of wisdom, rock hard realism and gentle compassion, O Lord, those who lead us and decide for us about how we should best live together as a community of people in this state.*

*Amen.*

Senator Below led the Pledge of Allegiance.

**INTRODUCTION OF GUESTS****SUSPENSION OF THE RULES**

Senator Clegg moved that Rule #24 of the New Hampshire Senate be so far suspended as to allow public hearings on Tuesday, February 18, 2003 and Wednesday, February 19, 2003 without the required five-day notice.

**SENATOR CLEGG:** We inadvertently forgot that Monday was a holiday, so in order to stay in compliance, we would not have been able to have hearings under the five-day rule. This will allow us to hold all of the hearings that we have scheduled for next week. It will also allow HCR 16 in from the House, which is a Resolution on Kashmir to be heard in a public hearing next Tuesday, and if passed by the Senate, the contingent from New Hampshire will be taking it to Pakistan with them during our week of vacation.

**SENATOR EATON (In the Chair):** The question is on the suspension of Rule #24. The motion requires a two-thirds vote of those present and voting.

**Adopted by the necessary two-thirds vote.**

**SENATOR EATON (In the Chair):** Rule #24 is suspended for hearings on February 18 and February 19 only.

### HOUSE MESSAGE

The House of Representatives is ready to meet in Joint Convention for the purpose of hearing Governor Craig Benson deliver his budget message.

### RESOLUTION

Senator Johnson moved that the Senate meet in Joint Convention for the purpose of hearing Governor Craig Benson deliver his budget address.

**Adopted.**

**In recess for Joint Convention.**

**Out of recess.**

### COMMITTEE REPORTS

**SB 19-FN**, relative to notification of groundwater contamination and repealing certain MTBE notification requirements for public water systems. Environment Committee. Ought to pass with amendment, Vote 3-1. Senator Prescott for the committee.

**Environment**

**February 6, 2003**

**2003-0206s**

**03/01**

#### **Amendment to SB 19-FN**

Amend RSA 485-C:14-b, II as inserted by section 1 of the bill by replacing it with the following:

II. Notification shall be made in writing within 30 days following confirmation of the contamination. Each property owner or public water supplier shall be notified at least once upon the discovery of contamination in an area. The commissioner shall provide the notification and may provide additional notification as the extent of contamination at a site is further determined and remediation occurs. This section shall apply only to groundwater contamination confirmed by sampling conducted by the department or at its direction.

SENATOR PRESCOTT: I would like to make a motion, if I may, to recommit this back to committee to do some further work on this bill. Thank you Mr. President.

**Senator Prescott moved to recommit.**

**Adopted.**

**SB 19-FN is recommitted to the Environment Committee.**

**SB 67**, relative to a report on municipal water needs. Environment Committee. Ought to Pass, Vote 4-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you Mr. President. I want to start off by thanking Senator Estabrook for putting this piece of legislation forward. It not only affects her district, but many others of us sitting here in this room and that is what we are here for. Thank you very much, Senator. I move that SB 67 ought to pass as was recommended by the Senate Environment Committee unanimously 4-0. This bill addresses a growing concern in my district, as well as many others throughout our state in regards to groundwater withdrawals. I will give you a little example: Last night at the Verizon Center if I wanted to buy a gallon of water it would have cost me \$19.40. On the way home, I paid \$1.72 for a gallon of gas. So how important is water? All of us are aware of the fight in Nottingham between local residents and USA Springs. The situation

prompted this bill, which seeks to redress a shortfall in current state policy. Under this bill, the Department of Environmental Services and Office of State Planning would coordinate a study to find ways to determine the impact of groundwater withdrawals on future municipal requirements, when determining whether or not to issue a withdrawal permit. This differs from current practice, which only takes into account the impact on current municipal requirements. Hearing ample testimony supporting this bill from both the Department of Environmental Services and the Office of State Planning, the Environment Committee voted 4-0 that this bill ought to pass. I would also like to say that we heard plenty of testimony from our constituents via the telephone and also...I don't have email, but I do have a telephone and a fax machine, and a lot of comments came in from my constituents on this bill. I hope that we can all agree that this bill should pass. Thank you very much Mr. President.

SENATOR ESTABROOK: Thank you Mr. President. Thank you Senator Barnes for your generous comments and the committee for its support of this bill. Future municipal water needs are absent from the list of adverse impacts which must be considered in permitting large groundwater withdrawals. As our communities continue to grow, our needs for municipal water supplies will continue to grow. As trustee of water resources for the public benefit, it is our responsibility to consider long-term needs when making short-term decisions. This bill will help that happen and I appreciate the committee's support.

**Adopted.**

**Ordered to third reading.**

**SB 16-FN**, establishing a state employee recognition and award program. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 4-0. Senator Prescott for the committee.

**Senate Executive Departments and Administration**

**February 6, 2003**

**2003-0201s**

**05/03**

### **Amendment to SB 16-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** establishing the governor's incentive and reward program.

Amend the bill by replacing all after the enacting clause with the following:

1 Governor's Incentive and Reward Program. RSA 99-E is repealed and reenacted to read as follows:

### **CHAPTER 99-E**

#### **GOVERNOR'S INCENTIVE AND REWARD PROGRAM**

**99-E:1 Committee.**

I. There is hereby established an evaluation committee to review employee suggestions and extraordinary service and to make awards.

II. The committee shall consist of:

(a) The director of personnel, who shall serve as chairperson.

(b) The commissioner of administrative services, or designee.

(c) Two members, appointed by the governor, who shall serve 2-year terms, one of whom shall be selected from a list provided by a certified public employee bargaining unit.

(d) One member of the senate, appointed by the senate president, who shall serve a term coterminous with the member's legislative term.

(e) One member of the house of representatives, appointed by the speaker of the house of representatives, who shall serve a term coterminous with the member's legislative term.

III. The committee shall submit to the governor and the general court an annual report of its activities, including employees recognized and rewarded, and efficiencies realized. The report shall be submitted by October 1 of each year.

99-E:2 Awards. The committee shall recommend to the governor and council that awards be given to state employees as follows:

I. Monetary awards for original suggestions to improve government cost savings or efficiency; or

II. Non-monetary recognition for extraordinary service in the interest of the state. Any state employee shall be eligible based on a suggestion or service that is outside or beyond the employee's regular responsibilities or performance standards.

99-E:3 Administration of Monetary Awards Program.

I. A state employee interested in receiving a monetary award under RSA 99-E:2, I shall submit in writing an original proposal to the committee and the commissioner of administrative services. The written proposal shall include the employee's name, position, department, and the date and time of filing. Employees may jointly submit one proposal. If the same proposal is submitted more than once, the first to submit the written proposal to the committee and to the commissioner of administrative services shall be entitled to any award.

II. Within 90 days of receiving the proposal, the commissioner of administrative services shall inform the employee in writing whether the committee recommends that the proposal be implemented or not, or whether more information is needed.

III. Within 6 months of implementation, the department of administrative services shall determine the amount of cost savings resulting from implementation of the employee's original proposal.

IV. The committee shall submit all proposals to the governor, the speaker of the house of representatives, and the president of the senate, whether the proposals were implemented or not.

99-E:4 Amount of Monetary Awards.

I. An employee who is eligible for a monetary award under RSA 99-E:2 shall receive, at the discretion of the governor and council, a one-time award of either \$10,000 or 10 percent of the cost savings in the first year of implementation of the proposal, whichever is less.

II. An amount equal to the monetary award shall be paid from the department's budget during the first fiscal year of implementation. Any remaining savings shall lapse to the general fund. If the department is self-funding, the award shall be paid from the department's operating budget. The department head shall certify any amounts so appropriated to the director of personnel for transfer and payment to the employee.

99-E:5 Non-monetary Recognition. A state employee shall be eligible for recognition under RSA 99-E:2, II based on the recommendation of the employee's supervisor or department head, for extraordinary suggestions or services in the interest of the state which are beyond the employee's regular responsibilities or performance standards. The committee, in conjunction with the employee's supervisor, shall determine the appropriate form of non-monetary recognition to which the employee is entitled.



99-E:6 Entitlement. No person shall have any vested rights to recognition or award under this chapter.

2 Effective Date. This act shall take effect upon its passage.

**2003-0201s**

### AMENDED ANALYSIS

This bill establishes the governor's incentive and reward program in which state employees may receive monetary recognition for original suggestions to improve government operations or non-monetary recognition for extraordinary service in the interest of the state.

SENATOR PRESCOTT: Thank you Mr. President. Senate Bill 16 is designed to encourage public employees to come forward with innovative, cost saving ideas. The bill establishes a committee to review proposals and make recommendations to the Governor and Council regarding those ideas, which hold the most promise. Employees whose ideas are implemented will be recognized by the Governor and Council during a special awards ceremony. Proposals that result in cost savings to the state will be given a one-time monetary award of either \$10,000 or 10 percent of the cost savings, whichever is less. The amendment more directly involves the Governor and Council in this process and addresses some concerns expressed during testimony about the amount of time an employee would have to wait before receiving an award. Whereas some had estimated as much as 18 months would go by, the bill as amended, will let the employee know within six months of implementation the amount of cost savings to the state. The committee voted unanimously in favor of the bill and urges the Senate to do the same. Thank you Mr. President.

SENATOR BOYCE: Mr. President, since this is my bill as prime sponsor, I just wanted to recognize that the additions in this amendment were put forth by the Governor's office in order to make it align with the Initiative Program that he has just announced in his budget, so I wanted to recognize that the work on this bill was a joint effort between the Executive and the Legislature.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 23-FN**, allowing veterans the right to purchase credit in the retirement system for certain service in the armed forces. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 4-0. Senator Kenney for the committee.

**Senate Executive Departments and Administration**

**February 6, 2003**

**2003-0202s**

**10/01**

### Amendment to SB 23-FN

Amend RSA 100-A:4, VI(b) as inserted by section 1 of the bill by replacing it with the following:

(b) Credit for active service in the armed services shall not be made until the member has paid either in lump sum or, if permitted by the board of trustees, by installment deductions from pay from an employer. The actuary's statement shall be the product of the member's annual rate of compensation at the time of buy-in, multiplied by the sum of the

member and employer contribution rates in effect with respect to the member at the time of buy-in, multiplied by the number of years of prior service credit bought.

**SENATOR KENNEY:** Thank you Mr. President. Senate Bill 23 will allow state employees who have served 10 years or more already vested in state service to buy back no more than five years in retirement benefits, excluding medical and surgical benefits. Firefighters, teachers and other state employees currently have this option but veterans, who have performed an invaluable public service to our state as well as our country, do not. The buy-back will not apply to retirement eligibility and because the purchase formula requires the employee to cover both the employer's and the employee's share of the retirement benefit, SB 23 will have no fiscal impact on the retirement system or the general fund. The bill was amended to make it absolutely clear that members who wish to purchase military service credit must pay both the employee and employer share. The committee voted unanimously that SB 23 ought to pass and we urge the Senate to do the same.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 60-FN**, relative to voluntary certification of persons installing or servicing propane gas or heating oil equipment. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Prescott for the committee.

**SENATOR PRESCOTT:** Thank you Mr. President. Senate Bill 60 will continue the development of a voluntary certification process focused on training mechanical and technical aspects of installing and maintaining heating fuel oil equipment. The process, which sunsetted in September of 2002, has been five years in the making and has involved much work on the part of private industry, the New Hampshire Technical College and the state Fire Marshall's office. These and other parties would like to continue to move forward in order to improve and maintain the heating oil industry as well as attract quality students to the profession. The committee voted unanimously in favor of the bill and we urge the Senate to do the same.

**Recess.**

**Out of recess.**

Senator Prescott moved to have **SB 60-FN**, relative to voluntary certification of persons installing or servicing propane gas or heating oil equipment, laid on the table.

**Adopted.**

### **LAID ON THE TABLE**

**SB 60-FN**, relative to voluntary certification of persons installing or servicing propane gas or heating oil equipment.

**SB 64-FN**, relative to updating the drought management plan. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Cohen for the committee.

SENATOR COHEN: Thank you Mr. President. The New Hampshire drought management plan has not been updated since 1990. In light of last summer's drought problems, the third worst on record and one which forced towns to regulate water use over a period of many weeks and months, a variety of lessons have been learned about drought management that should be applied to future planning, including the drought classification system, drought indicator thresholds and the drought recovery process. And in light of increased demands on water withdrawals, this will be a significant tool to help us set priorities for water usage in times of strain on public water. The committee voted unanimously in favor of SB 64 and urges the Senate to do the same. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 28-FN**, relative to the transcription of hearings before standing committees of the senate. Internal Affairs Committee. Inexpedient to legislate, Vote 4-1. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move that SB 28-FN be inexpedient to legislate. Senate bill 28 sought to codify that all proceedings before standing committees of the Senate be recorded and transcribed by the committee secretaries and deposited with the Senate Clerk for preservation. This is an expansion of recording and transcribing just the hearings and would include all executive sessions as well as any time the committee gathered. Including the word "verbatim" into statute would require that all secretaries be replaced with either legal transcriptionists or court reporters, and would require a significant increase in costs – money we just don't have available. We currently have a dedicated team of committee secretaries who are working hard to provide committee hearing transcripts in an efficient and timely manner. Therefore SB 28 is unnecessary. We ask your support for the inexpedient to legislate motion. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 62**, relative to the application and enforcement of the state building code. Public Affairs Committee. Ought to pass, Vote 4-1. Senator Barnes for the committee.

SENATOR BARNES: Thank you Mr. President. I move that SB 62 ought to pass. Senate Bill 62 clarifies the definition and application of the state building code and the enforcement by local authorities. The suggested technical changes were requested and unanimously voted on by the State Building Code Review Board and approved by the Attorney General's Office. Senate Bill 62 grants municipalities the opportunities to adopt, by reference, any codes promulgated by the International Code Conference as well as enact additional provisions to strengthen the state building code. Contractors will be required to notify the Fire Marshal's Office of construction plans and the State Building Review Board will be able to make rule changes updating the building codes. These rules will in turn be subject to review by the Legislative Rules Committee. Thank you. I hope that we will get your support.

**Adopted.**

**Ordered to third reading.**

**MOTION TO REMOVE FROM THE TABLE**

Senator Boyce moved to have **SB 60-FN**, relative to voluntary certification of persons installing or servicing propane gas or heating oil equipment, taken off the table.

**Adopted.**

**SB 60-FN**, relative to voluntary certification of persons installing or servicing propane gas or heating oil equipment.

**SENATOR BOYCE:** The reason that I thought that this ought to go on the table a few minutes ago, was that it exempts the state Fire Marshal's adoption of rules from the JLCAR process but, it was pointed out to me just now that it actually does include that most of what they would do under the rule, would be subject to JLCAR and only setting of the fees, which could not exceed the 125 percent of their actual costs would be exempt from JLCAR. So in looking at it again, I think that my objections to this are not necessary, so I think that we can go ahead and proceed on this bill.

**Question is on the adoption of the committee report of ought to pass.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**ANNOUNCEMENTS****RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills ordered to third reading be by this resolution read a third time and all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

**LATE SESSION****Third Reading and Final Passage**

**SB 62**, relative to the application and enforcement of the state building code.

**SB 67**, relative to a report on municipal water needs.

**RESOLUTION**

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, receiving House Messages, and receiving Enrolled Bill Reports and Amendments, and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

**In recess to the Call of the Chair.**

**Out of Recess.**

**HOUSE MESSAGE**

The House of Representatives has passed bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 517-LOCAL**, relative to Keene Road and Main Street in the town of Hillsborough.

**HCR 16**, urging increased diplomacy to achieve a just, peaceful, and rapid resolution of the conflict between India and Pakistan relative to the state of Jammu and Kashmir.

### INTRODUCTION OF HOUSE BILLS

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **HB 517 - HCR 16** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 517-LOCAL**, relative to Keene Road and Main Street in the town of Hillsborough. (Transportation)

**HCR 16**, urging increased diplomacy to achieve a just, peaceful, and rapid resolution of the conflict between India and Pakistan relative to the state of Jammu and Kashmir. (Energy and Economic Development)

### LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*February 20, 2003*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer. Good morning! In order to successfully drive one of those huge eighteen wheel tractor trailers, and especially to back one up, the first thing you need to do is to learn how to think and act counter-intuitively. You have to be willing to do things with the steering wheel that go against your instincts. It is a matter of turning those wheels to the left when your head and heart are screaming "to the right, fool, to the right!" – and vice versa. Anyone who has ever tried to back up a car with a boat trailer hitched to it knows what I am talking about. It is sort of like the task of government and legislative leadership, isn't it? For if you do not learn the art of knowing when to ignore your intuition, and to turn hard left when right is your tendency, or hard right when left is your default setting, you are going to end up backing our truck around in an endless circle. Have you ever seen one of those expert truck drivers back one of those gigantic vehicles up to a loading dock with barely enough space on either side to slip a piece of paper through? It is an astonishing feat of counter-intuitively, and it is exactly what you need to be willing – from time to time – to do for us. Let us pray:

*Gracious and ever patient God, You have placed into these hands the steering wheel of the gigantic and vital eighteen wheeler of this state's government. Give to our drivers both the intuition as well as the counter-intuition to know when to turn which way, that they may carefully and skillfully back us into just the right spot.*

*Amen.*

Senator Green led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS

### COMMITTEE REPORTS

**SB 22**, establishing a committee to study the economic effects of student activities on state higher education campuses on the surrounding municipalities. Education Committee. Ought to pass with amendment, Vote 3-0. Senator Johnson for the committee.

**Senate Education**  
**February 13, 2003**  
**2003-0315s**  
**08/04**

### Amendment to SB 22

Amend the title of the bill by replacing it with the following:

**AN ACT** amending the duties of the public higher education study committee.

Amend the bill by replacing all after the enacting clause with the following:

1 New Subparagraph; Public Higher Education Study Committee; Duties Amended. Amend RSA 187-A:28-c, I by inserting after subparagraph (f) the following new subparagraph:

(g) The economic effects of student activities on higher education campuses as reported in studies by the university system of New Hampshire and municipalities. The committee shall study possible solutions and recommend legislation. Possible solutions for the committee to study include payments to the municipalities by institutions of higher education in lieu of taxes; additional fees or assessments; and any other remedy suggested by the municipalities affected by higher education campuses.

2 Effective Date. This act shall take effect upon its passage.

**2003-0315s**

### AMENDED ANALYSIS

This bill amends the duties of the public higher education study committee to study the economic effects of student activities on state higher education campuses on the surrounding municipalities.

**SENATOR JOHNSON:** Thank you Mr. President. I move SB 22 ought to pass with amendment. Senate Bill 22 which calls for a study committee, will address an issue of reimbursement related to public safety support to public higher education afforded by the towns where they are located. While studies have been done in the past independently by the university system and colleges, this study would be done by the Postsecondary Education Commission which could bring an important impartial view to the issue. I brought this bill forward because of the concern by the town of Plymouth, which is in my district, and would ask for your vote of ought to pass with amendment. Thank you Mr. President.

**SENATOR LARSEN:** I just rise to support this bill recognizing that there are other cities as well who support state institutions and their needs to be a study of that support. The university, in fact, has been a very willing and helpful supporter to many communities that they reside in and I think that you will hear from me in the future of bills which address the need for the city of Concord to have its concerns regarding the provision of services, fire service, emergency service to state facilities, paid for by Concord taxpayers and I hope that you will all support that as well. Thank you very much.

SENATOR ESTABROOK: Thank you Mr. President. I just thought that I would rise as the member representing the home community of the University of New Hampshire to echo support for this bill. Also as a member of the Public Higher Education Oversight Committee, to which it will be referred, I can assure that there will be ample discussion there on these very important issues.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 51-FN**, relative to membership on the New England Board of Higher Education. Education Committee. Ought to pass with amendment, Vote 4-0. Senator O'Hearn for the committee.

**Senate Education**  
**February 13, 2003**  
**2003-0314s**  
**03/04**

**Amendment to SB 51-FN**

Amend RSA 200-A:3 as inserted by section 1 of the bill by replacing it with the following:

200-A:3 Membership of Board. There shall be 8 resident members from New Hampshire on the New England Board of Higher Education as provided in article II of the compact. One of such resident members shall always be the chancellor of the university system. *The second resident member shall be the executive director of the postsecondary education commission. The third resident member shall be the commissioner of regional community-technical colleges.* The ~~second~~ ~~through~~ ~~fourth~~ ~~and fifth~~ resident members shall ~~always be the president of the university of New Hampshire, the president of Keene state college, and the president of Plymouth state college~~ *be citizens of the state appointed by the governor and council.* The ~~fifth~~ ~~sixth~~ resident member shall be a member of the house of representatives appointed by the speaker of the house. The ~~sixth~~ ~~seventh~~ member shall be a member of the senate appointed by the president of the senate. ~~The seventh resident member shall be a citizen of the state designated by the governor as his responsible representative.~~ The eighth resident member shall be a representative of a private college in New Hampshire. ~~The seventh and eighth members shall be~~ appointed by the governor and council. The term of office for each of the first ~~4~~ ~~3~~ resident members shall be concurrent with his *or her* term as chancellor, ~~or president~~ *executive director; or commissioner.* The term of office for each of the latter ~~4~~ ~~5~~ resident members shall be for 4 years and until ~~his~~ *a* successor is appointed and qualified, except that the term of any member of the general court shall terminate if such member shall cease to be a state legislator. In that case, another member shall be appointed in a like manner for the unexpired term. The term of the member representing a private college shall end if the member's association with the private college terminates. Each member of the board shall receive his *or her* expenses actually and necessarily incurred by ~~him~~ *the member* in the performance of his *or her* duties as a member. In addition to their expenses, the *fourth*, fifth, sixth, seventh, and eighth members shall receive \$15 per day compensation for time actually spent in the work as a member of the New England Board of Higher Education, provided that the total for expenses and per diem

compensation for any of such [4] 5 members shall not exceed the sum of \$500 during any one fiscal year. All expenses and per diem compensation shall be audited by the commissioner of administrative services as expenses of other employees are audited and shall be a charge against any appropriation provided for this purpose.

**2003-0314s**

#### AMENDED ANALYSIS

This bill changes the New Hampshire membership on the New England Board of Higher Education by replacing the college and university presidents with the executive director of the postsecondary education commission, the commissioner of regional community-technical colleges, and a member appointed by the governor and council.

SENATOR O'HEARN: Thank you Mr. President. I move SB 51 ought to pass with amendment. Currently, legislation requires that each of the presidents of the university system is a member of the New England Board of Higher Education. The university system makes up over 50 percent of the board while other sectors of higher education in New Hampshire are not represented at all. The Postsecondary Education Commission continually pays dues to the board, yet is not represented. Also, the Department of Community Technical Colleges is a participant of many of the programs offered by the New England Board of Higher Education, yet is also not represented on the board. This proposed legislation would allow both of these sectors to become members of the board to ensure optimal membership. The college presidents testified that they were well represented by the chancellor. The Governor still maintains the flexibility of appointing presidents of the university system to the board, while not making it a requirement. The Education Committee asks your support for the motion of ought to pass with amendment. Thank you.

#### **Amendment adopted.**

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise in support of the legislation. The New England Board of Higher Education is an organization that really represents all of the public institutions in New England. It is a very worthwhile situation. I think that the changes that have been made will provide for more input on the part of everyone with regard to the actions of the New England Board of Higher Education. Putting all of the presidents on really was a replication of the same voice. Having the chancellor there, I think, is the significant aspect in allowing others to be present makes for a more productive and a fuller discussion of the issues. The New England Board has proved very beneficial to New Hampshire. The fact that our students are able to go out-of-state to public universities and pursue majors that are not offered in New Hampshire, for basically in-state, plus a little surcharge, makes for a great utilization of the facilities throughout New England and does not force our state to put together majors that are offered someplace else. So it is a very good situation. I think that the amendment is very worthwhile. I applaud the committees work on this. Thank you Mr. President.

SENATOR PETERSON: Thank you Mr. President. As prime sponsor of this legislation, I would also like to thank Chairman O'Hearn and her committee for the work that they have done on this bill. The New England Board of Higher Education is a wonderful affiliation for our state. It affords many millions of dollars in benefits to our citizens each year



in tuition reductions and costs our state very little in the balance. So I appreciate her work on this bill. I thank Senator D'Allesandro for his comments and thank you, Mr. President.

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HCR 16**, urging increased diplomacy to achieve a just, peaceful, and rapid resolution of the conflict between India and Pakistan relative to the state of Jammu and Kashmir. Energy and Economic Development Committee. Ought to pass, Vote 5-0. Senator Prescott for the committee.

SENATOR PRESCOTT: Thank you Mr. President. I do move that HCR 16 ought to pass as was recommended unanimously by the Senate Energy and Economic Development Committee. This resolution addresses a conflict that has been going on for more than half a decade, half of a century involving a dispute over a track of land between India and Pakistan. The region in question is called Kashmir. Both India and Pakistan claim that it is a sovereign part of their territory. We heard that this conflict has resulted in deaths of untold thousands as well as countless reports of torture, cultural and social annihilation, pitting neighbor against neighbor and that this conflict has also resulted in the situation that threatens all of us, even those of us who are four thousand miles away. That threat is a possibility of nuclear war between the two countries in conflict which could ever change the world we live in. It is hoped that this legislation will help in a peaceful resolution to this conflict. Based on this, the Energy and Economic Development Committee unanimously recommends that this resolution ought to pass. Thank you very much Mr. President.

SENATOR SAPARETO: Thank you Mr. President. Mr. President, whenever we have an opportunity like this to do something good to possibly avoid a nuclear war and draw attention to a very serious conflict and the atrocities that occur there, I think, is a good thing. We are also in a unique position here where we have actual contact with the upper levels of government in Pakistan, that we can perhaps make an impact and that we can also draw attention to a very serious threat that also would have an impact on our lives, so I hope that you support the committee recommendation of ought to pass.

SENATOR D'ALLESANDRO: Thank you Mr. President. I, too, rise in support of the resolution as a cosponsor. My daughter spent four months in India last year, teaching in the village of Salon, which is in the foothills of the Himalayas, teaching English as a second language to young women and to older women, and brought back to us, our families, some very interesting comments about the Kashmir situation. We have two nations lined up, one against the other. Pakistan versus India. We have the territory of Kashmir. We have two nuclear powers. We have millions of troops gathered. Actually they are either billeted or formed on either side of the Kashmir state. The volatility of this situation is something that we should all recognize. Now we are talking on a constant basis about problems throughout the world, yet when we identify a situation like this, where you have two defined nuclear powers, and these nuclear powers have elevated the level of activity in this area to a situation where they are constantly in an adversarial capacity. This does threaten the peace of the world. You have a nation with a billion people on one

side and its advisory on the other side. We should be fully cognizant of these affairs because these affairs have a dramatic effect on us. We are the lone superpower left in the world. If any nation has the capability to mediate and to somehow project itself into these differential situations, it is really incumbent upon us as a democracy to do that. We live in a world that is really on the edge at all times. This situation is a true manifestation of being on the edge. It is right that we do this. It is right that we send these representatives who are going to Kashmir next week to bring the hope of the people of the state of New Hampshire, that a peaceful resolution can be obtained. Thank you Mr. President.

SENATOR LARSEN: I, too, rise to support the resolution and to applaud the effort that seeks diplomacy in seeking a just and peaceful resolution of a conflict. I think that we ought to perhaps also consider the idea of sending our U.S. Senate and House of Representatives a similar message on the war that our own country is considering, that we urge increased diplomacy to achieve a just, peaceful and rapid resolution of the conflict. We too face the threat of nuclear retaliation and we need to consider that. I think that HCR 16 is a wise move and I think that we ought to also look to our home country and consider sending a similar message of diplomacy to our own representatives. Thank you.

SENATOR CLEGG: Thank you Mr. President, I also rise in support of the resolution and also would like to publicly thank Senator Sapareto for making his vacation a part of the delegation going to Pakistan to present this resolution.

SENATOR BOYCE: Thank you Mr. President. As the other Senate cosponsor of this resolution, I would like to stand and speak in favor of it. I do think that although the possibility that this will make a real lasting change in the situation there is very remote, the fact that we are willing to make the statement that is a situation that needs a solution, is going at least one step towards that solution. I think that it is a good measure to put forward. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 49**, relative to fluoridation of public water supplies and local decisions regarding fluoridation. Environment Committee. Inexpedient to legislate, Vote 3-2. Senator Barnes for the committee.

SENATOR BARNES: Thank you Mr. President. I move that SB 49 be inexpedient to legislate as recommended by the Senate Environmental Committee. Water fluoridation has been an acceptable good health practice for over fifty years. Fluoridation of town water supplies has repeatedly been proven to reduce tooth decay in children and adults. Members of the U.S. Centers for Disease Control call fluoridation "one of the greatest public health achievements of the last century". What's more is there has been dramatically insignificant scientific testing that amply proves any negative effects on humans. As an added comment, part of the testimony against this bill was given by a good friend of all of ours, former Senator Katie Wheeler. Be it duly noted that Senator Wheeler and I, probably for the first time in six years, agreed on something. With that, I will ask for your support. My dentist, and I am sure that your dentist will tell you the same story, those of you who still go to a dentist and have your own teeth, and I am lucky, I still have mine, probably because of fluoridation. They tell me, the dentists tell me, my dentist tells me

that he can tell immediately when a child sits in his chair, whether they have had fluoridation or not. The decay in the teeth versus the nondecay. Thank you very much.

SENATOR BOYCE: Thank you Mr. President. I rise to speak in favor of the motion to find this inexpedient to legislate. Having spoken to several dentists very recently, one of the concerns that they have about this bill is that it might be, it might make it less likely that some water supplies will be fluoridated. They also pointed out that with the current situation with the low reimbursement for the dentist for the Medicaid Dental Program, and the shortage of dentists overall, that this is one measure, fluoridating the water, is one thing that can have a positive effect on particularly low income children, who don't get to see a dentist very often or at all, and having fluoride in their water might make it so that when they do actually go see a dentist, it is for some fairly simple routine work rather than massive restoration. They see this as a very simple...fluoridation as a simple method for achieving great improvements in the children's dental health. They asked that we find this inexpedient to legislate for that reason. This bill would put on the ballot, when a town was going to vote whether or not to treat their water with fluoride, the trace elements that might be found in that fluoride treatment that was going to be used. The situation of that is that when you are taking a water supply, you are taking a large amount of water and putting a very small amount of this "sodium fluoride" or well there are other fluoride compounds, but you are putting a very small amount of it into a very large amount of water. In that small amount of fluoride there are trace elements like arsenic, zinc, chromium and whatever else. Those are diluted to the point where they are almost impossible to measure in the final water supply, but if you put it on the ballot that you are going to put arsenic in the water when you are fluoridating it, it might scare people out of doing something that is beneficial to the majority of, particularly the low income children. So they asked us to please vote this inexpedient to legislate. Thank you.

SENATOR BELOW: Thank you Mr. President. I rise in opposition to the motion of inexpedient to legislate. Not because I support the bill as originally introduced. I don't think that the original bill should go forward and I do not support ought to pass. I think that what Senator Boyce has said is quite correct by-and-large as the bill, as introduced. But in the process of the public hearing on this bill, I think that we heard some very significant testimony from Doctor Roger Masters, President of the Foundation for Neuroscience and Society at Dartmouth College. He has undertaken research into the linkage between certain types of fluoridation and elevated lead levels in blood. It is important to note that the original type of fluoridation that was researched back in the 40's was with sodium fluoride. That is where most of the research as to the safety of fluoridation has come from; however, in recent years, many or most, actually most public water supplies have moved to different kinds of fluoride than sodium fluoride, specifically fluosilicic acid and another compound, sodium silicofluoride, known as silico fluorides. Recently, a few years ago, the EPA had acknowledged that they knew of no studies of human health effects of chronic low level exposure to the silico fluorides. Professor Masters has published a number of articles, one of the more recent ones, in the *Journal of Neuro Toxicology* entitled *Association of Silicofluoride Treated Water with Elevated Blood Lead* that found that silico fluorides are consistently associated with increased

risk of elevated blood levels for virtually any race or age group controlling most factors commonly associated with increased blood level. This and other studies that have been involved with hundreds of thousands of blood tests and hundreds of thousands of children, point to a statistically significant risk of elevated blood level association with chronic ingestion of water treated with silico fluorides. It is important to note that there is an option to go back to sodium fluoride for public water systems which is what you get in your toothpaste or at the dentist, which studies have shown are not associated with these risks of elevated blood levels. Just less than a year ago on April 25, 2002 the EPA's National Risk Management Research Laboratory stated that the release in drinking water from silico fluorides is not well understood and expressed concerns over fluorides interaction with other chemicals. There seems to be a complex issue going on and clearly, it needs more research. I think that in the same manner, this bill merits further consideration and should either be rereferred to committee or laid on the table so that an alternative amendment could be prepared that looks or addresses more clearly, this issue of the difference between silico fluorides and sodium chloride. I think that as we all know, elevated lead levels in children has huge detrimental public health effects. Low-income children are at higher risk, typically because they are exposed to lead in the homes. If silico fluorides accelerate the uptake of that into the body, it puts those children at increased risk for failure in schools. That is a particularly difficult area and it increases the risk of violent behavior activity over their lifetime; therefore, I would urge that this either be defeated or laid on the table. Thank you Mr. President.

#### **Recess.**

#### **Out of recess.**

SENATOR BARNES: Senator Below, I have a question. I guess that it is a would you believe, Senator Below. You mentioned that professor from Dartmouth in his study, and we all heard that, and it was very impressive. We also have here...so every report on one side, would you believe there is a report on the other side? In America, many of us put a lot of faith in what the members of the U.S. Centers for Disease Control has to say. That is the whole thing for the whole United States of America. I will reread this. "The Centers for Disease Control called "fluoridation" one of the great public health achievements of the last century". Would you believe that?

SENATOR BELOW: Oh, I certainly believe that. I don't deny that fluoridation and sodium fluoride helps prevent dental cavities. That is a good thing. The point that I am making is that very recently research has shown that the type of fluoridation that was researched in terms of safety is sodium fluoride. That is not what most public water systems are using. They have moved to something else. Recent research, which there hadn't been any until recently, show that there is...that there appears to be a very serious risk of elevated blood levels from the use of silico fluorides instead of sodium fluorides, and therefore, there may be public health damage that may see the benefit, particularly when we could go back to sodium fluoride and not have that problem with elevated blood levels.

SENATOR LARSEN: Senator Below, am I understanding you to say that your interest in taking some time with this bill is not to deny the importance of fluoride to prevent dental disease in New Hampshire, but in fact, to try and encourage the use of perhaps a more medically safe

type of fluoride, that being sodium fluoride, and that you might be able to find a way to encourage that in New Hampshire if we had a little more time with the bill? Am I correct in understanding that?

SENATOR BELOW: Right. I am not sure of what I would like to propose, exactly as an amendment, quite honestly. Things have moved so fast in the past week that I haven't had time. I do think that, because this came out in the public hearing on this bill, and it is creditable. Nobody really contradicted this research and findings. I would like to see time to potentially see this other issue addressed, which is related to the original bill, but obviously I am not supporting passage of the bill as introduced.

SENATOR LARSEN: Is it also my understanding that if we were to somehow encourage the use of sodium fluoride versus silico fluorides, that there is no cost difference to communities in encouraging that, and that in fact, the cost differential is minimal but the medical improvements could be substantial? Am I correct in understanding that?

SENATOR BELOW: I don't know. That is one thing, I think, it would be wise to take a little more time to find out before we try to take any final action on this bill. The intent of the bill was to try and inform the public about some risks that might be associated with fluoridation. I think that some of the risks presented in the original bill are, like Senator Boyce said, "are not really creditable" or meriting that much concern, but I do think that this other issue merits a little more thought. That is why I think that a little more time to look at, for instance, what might be the cost or if there is any significant cost of using sodium fluoride instead of silico fluoride and the issue might be that the public may need to know about the difference. It has not been common knowledge that there is a significant difference and that silico fluorides were not tested for safety like sodium fluorides were.

SENATOR LARSEN: Thank you. I would move to table SB 49.

### **MOTION TO TABLE**

Senator Larsen moved to have **SB 49**, relative to fluoridation of public water supplies and local decisions regarding fluoridation, laid on the table.

**Question is on the motion to table.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Below.**

**The following Senators voted Yes: Below, O'Hearn, Foster, Larsen, D'Allesandro, Estabrook, Prescott, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse.**

**Yeas: 8 - Nays: 15**

**Motion failed.**

**Question is on the committee report of inexpedient to legislate.**

**Committee report of inexpedient to legislate is adopted.**

**SB 65**, relative to reducing certain mercury emissions. Environment Committee. Inexpedient to legislate, Vote 3-2. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you Mr. President. I move that SB 65 be voted inexpedient to legislate as recommended by the Senate Environment Committee. Many of us who were in the legislature last session will recall HB 284, otherwise known as the clean power act. This was an act aimed at cleaning up and improving our power supplies within the state of New Hampshire. This bill received strong bipartisan support and was signed into law by then Governor Jeanne Shaheen. House Bill 284 was very explicit in addressing the concerns of mercury emissions. RSA chapters 125-O:3, 4 placed specific regulations concerning the reduction of current and future mercury emissions. Since this bill was signed into law, the DES has been working very closely with power suppliers in New Hampshire to see that the standards are met. Full implementation of HB 284 will not occur until 2004 because of the time line involved in testing current mercury emissions and implementing cleaner technology. Passage of this Senate Bill before us today would jump the gun on HB 284 before it has even been allowed to take effect. This does not make sense and would be an imprudent move on this bodies part; therefore, I urge the Senate to vote this bill inexpedient to legislate and let the Clean Power Act we worked so hard on last year, do its job. Thank you Mr. President.

SENATOR COHEN: I rise in opposition to the inexpedient to legislate report of the committee. I think that we all recognize that our job here is to protect and preserve the common good. An essential part of the common good is the health of our constituents **TAPE CHANGE** mercury is not something that we want to continue to put in the air and in the water. House Bill 284 is a good start. No question about it. I was a co-sponsor of it. I don't think that anybody ever thought that that was the end, the final resolution of cleaning up our air and our water and our pollution. It is a Clean Power Act and it is very good for what it does. It helps cut pollution up-wind through a legitimate process of trading pollution credits, but mercury cannot be traded. I repeat, mercury cannot be traded. It goes up the stack and it is very heavy and it falls very close by. We have to take personal responsibility for the dangerous and deadly pollution that comes from the polluters right here in New Hampshire. Some facts on mercury: The EPA's Utility Air Toxic Report concludes that coal fired boilers of which there are three in New Hampshire, Bow, Portsmouth and Newington. The coal-fired boilers are responsible for 33 percent of manmade mercury emissions in the United States. These coal plants are the countries largest source of uncontrolled mercury emissions attributed to human activities. The same reports also concluded, and this is the important thing: how bad is mercury? We talked about lead just a few minutes ago and the effects of lead in our children. Mercury is at least as bad as lead and we are generating quite a bit of it. Pounds and pounds are being emitted here in New Hampshire. Mercury is a potent bio-accumulative neurotoxin. It accumulates in your body. It is a neurotoxin, like lead. It has significant impacts on developing fetus and young children that result primarily from eating fish. As I said, pounds and pounds of this stuff are produced here in New Hampshire. It takes one gram in a twenty-acre pond to make the fish unusable. One gram for a twenty-acre pond makes fish unfit for human consumption. The New Hampshire Department of Health and Human Services puts out this brochure here, "Is it safe to eat the fish that we catch?" The answer is no. "The truth is" and this is from the brochure, "The truth is that the fish caught in New Hampshire's lakes, ponds and rivers have mercury in them. Mercury in the air settles into the waters and it then

builds up in the fish. So older fish have higher levels of mercury than younger fish. In this country, there are 4.8 million women of childbearing age that currently have elevated levels of mercury from eating contaminated fish. Approximately 321,000 newborns are at risk of neurological effects from exposure in utero to this toxic metal. Major reductions are in fact feasible. There was an amendment that I was hoping that the committee would adopt that would have made it much clearer. It didn't have any kind of caps in there, it was easy to measure and I would prefer this bill to be reported ought to pass so that we could put a good amendment on there. Does it cost a lot of money? No, it doesn't. In fact, in Massachusetts, the Department of Environmental Protection found that removal of 85 to 90 percent of mercury in flu gas has been demonstrated to be both technologically and economically feasible. It can be done and we have to do it. A question: Are people in New Hampshire interested in clean air? Will it raise their electric bills? A couple of surveys that were done and I have copies of these if anybody wants to see them. Citizens are willing to pay more for cleaner energy. This was done in the year 2000. Eighty-three percent would pay a dollar more a month. Eight percent of New Hampshire's citizens would pay three dollars a month. Seventy-seven percent would pay \$5 a month. We are talking about two to three dollars a month. The people of New Hampshire have said very clearly that they want clean air and they are willing to pay a little bit because the health costs are extremely expensive. They are extremely expensive and we have a responsibility to do something about that. Another survey in 2001: How much more each month, would you be willing to pay for electricity to make power plants reduce emissions that effect air quality? A huge percentage here would pay less than \$5. Seventeen percent said yes to \$6-\$10 a month. Thirty-seven percent said yes. It goes up to \$21-\$30, it goes up to and still ten percent of the people surveyed in New Hampshire would still be willing to pay \$21 to \$30 a month more. We are only talking \$2-\$3 a month more to clean up this pollution. There is a lot of talk about personal responsibility. This mercury is the responsibility of the state of New Hampshire. It cannot be traded. We can't blame it on people upwind. It falls very close by. People are being very adversely affected by this. This is a dangerous neurotoxin. There are major health problems. It is very costly to ignore. The technology is there. All that we need is the will. We must take personal responsibility for what we are in fact responsible for. The question that we face here is who do we, in the Senate work for, the polluters or the citizens of New Hampshire? With that I ask for your vote against the committee report.

SENATOR JOHNSON: I think that we are all aware of and have a concern about mercury. I have a two-part question, Senator Cohen, if I may? The first part, you have already answered. You are a cosponsor of HB 284. My second question is that we all agreed on 2004 as the timeline to recognize the mercury situation. So you were a part of that also, were you not?

SENATOR COHEN: I was a cosponsor of HB 284 and I also recognize that mercury cannot be traded and that this bill does not address mercury. In fact, at our hearing, a spokesperson for the DES said that HB 284 requires no reduction. It "is still up in the air" very literally and that the electrostatic precipitators that have been installed, still allow a lot of mercury to be emitted. There are problems with that bill, we are trying to address those problems. Thank you.

SENATOR BARNES: Senator Cohen, just to set the record straight before I ask the question, I am not a stockholder and I do not work for PSNH. That is the outfit, obviously, that you are referring to when you said do we work for the polluters? I don't work for the polluters. I never have and I don't own stock. Just for the record.

SENATOR COHEN: I hope that you will vote with me today.

SENATOR BARNES: Would you believe that several years ago I was a chairman of a committee and Senator Below, then Representative Below, was on a committee which was Energy Deregulation? We had a lot of hearings and there were a lot of conversations about pollution. Would you believe that all of the reports that I saw then and things that I still see today, that a tremendous amount of the mercury that is here is coming from the West? It is coming from the Pittsburgh's, the Cleveland's, the Chicago's, the Buffalo's. That is where the winds come from. They come from the West. The weather comes from west. When they have a storm out west, three days later we have it here in New Hampshire. So would you believe that I believe, that the places that we have here in New Hampshire are not contributing all of these numbers, but it is being contributed by folks to our West?

SENATOR COHEN: If you say that you believe that, I believe that you believe that. I recognize a part of what you are saying, consistent with what you are saying is that approximately half of the mercury pollution is in our water, in our earth here, comes from the state of New Hampshire. That mercury cannot be traded. The mercury that is generated out West falls pretty much where it is. The other, the SOx, the NOx, that can be traded, that travels very far, but mercury is very heavy. It does not travel very far. The mercury...we should take personal responsibility for it. We have to do something to clean up what comes out of the stacks here in New Hampshire. We owe it to the people of New Hampshire. We owe them nothing less.

SENATOR BARNES: Well I guess that it boils down to whose report that you believe.

SENATOR COHEN: The science is pretty clear on this.

SENATOR BARNES: It is on the side that I just discussed also.

SENATOR LARSEN: I, like Senator Cohen and Senator Johnson, was a cosponsor of the Clean Power Act and we made some incredible progress in terms of cleaning our air and encouraging the increased reduction of pollutants. I also want to point out that in doing that, as a cosponsor, and many of us, by passing that legislation, we cannot lose sight of the concern that mercury pollution does in fact stay very close to home. I was happy that the Department of Environmental Services set up new monitoring stations as a result of our concerns and in the near future, we will begin to get more reports on, in fact what pollutants are occurring downwind of the power stations, particularly our coal powered stations, but what was interesting this morning was on the radio, I woke to a discussion on mercury pollution. A recent government report, which we searched, apparently was in the *Wall Street Journal* and is also contained in today's *New York Times*. This new government report concludes that when government works on cleaning up an environmental issue that there are some successes. This new report does question the area for new areas of a study such as the link between mercury and childhood development and the rising rates of childhood asthma, even as the air quality has improved over



these 15 years. It notes that there is a link, scientist link developmental IQ deficits and motor skill dysfunction which is expected to play a role in Attention Deficit Disorder and Autism. Mercury has been the subject of these studies and concerns that it is from power plants...of what power plants released while burning coal. Some of the most important questions they note in the report, say that asthma is the leading cause of school absenteeism linked to chronic disease; 3.8 million children have an asthma attack in the last 12 years and there are direct costs to asthma estimated at \$14 billion a year. Clearly some of those concerns are ones in which we cannot lose sight of and this bill, expressing support for this bill, helps us to raise those concerns recognizing that through government action, through all of us, elected officials taking steps. We have succeeded in reducing blood lead poisoning in children and that report notes what effects that we have had in terms of reducing blood lead poisoning. Through action from people such as us, we can in fact, improve the lives of our future generations. I do think that we don't want to lose sight of those actions. Thank you.

SENATOR JOHNSON: Just to clarify the issue a little bit, Mr. President. I would like to read a couple of paragraphs from HB 284. It says "An annual cap applicable to total mercury emissions from all affected sources burning coal as a fuel to be recommended by the department not more than 60 days following the U.S. Environmental Protection Agency's proposed regulation establishing a maximum achievable control technology standards for mercury emissions from utility boilers, but in no case later than March 31, 2004 to a timely consideration by the legislature expected for July 1, 2005." Then another paragraph, just briefly, if I may? "Stack testing for mercury emissions from Merrimack Units one and two and either Schiller Units four, five or six, shall be completed using a department approved test method no later than one-year after the effective date of this section. The owner or operator shall submit a test protocol to the department at least 45 days prior to the commencement of stack testing". So, Mr. President, I say that they are doing a very good faith effort to accomplish what we ask them to do and I think that we should allow that to happen. Thank you.

SENATOR PRESCOTT: Thank you Mr. President. I stand as not an expert on this issue; however, I am on the Environment Committee and asked a few questions that I would like to present here. I asked a question concerning the rates that may be increased if we knew what treatment would be needed to treat the stacks of our power plants? Those are two questions in one. The answer was "we don't know the costs of treatment since we do not have the testing done to find out how we can reduce 90 percent of the mercury coming out of the stack". Then the answer to the costs was that if it were expensive they, PSNH, would probably not be in the business of providing power to New Hampshire. We, here, our regulated power is about 4.6 cents per kilowatt-hour. If I recall right, that was the number that we pay out of PSNH. The free market, called the "spot market", is 7 cents and that is about a 35 percent increase if we went to spot market from the regulated market. I look at it, in my bill, if I am paying \$150 a month for electricity, my bill would go over \$200 a month. That is how I see the answers that were given to me when I was in the committee. Number one: they don't know how much it is going to cost to remove 90 percent of the mercury. Number two: we have to lead the state, the spot market takes over and it could possibly be a 35 percent increase in electricity rates.

SENATOR COHEN: Thank you very much. I appreciate that. Not to get too technical, but the amendment that we were trying to get to, did not talk about caps. It was something that was definitely technologically feasible to reduce mercury as measured from flue inlet to outlet. It is much easier to measure. It is technologically and economically feasible as studies have shown. This is something that can be done. As I said, all of the polls have indicated very clearly that people are willing to pay a lot more to clean up their air than this would actually cost. Thank you.

SENATOR GATSAS: Senator Prescott, are you aware that last year we passed legislation, unanimously, or actually two years ago, to extend to a 33 month period for PSNH to hold onto their fossils and hydros? And, are you aware that Senator Below has sponsored a legislation to extend that, so that the costs to the consumer would not go up by 35 percent in this legislative session?

SENATOR PRESCOTT: Yes I know that. Does that legislation preempt someone from going out of business?

SENATOR GATSAS: No.

SENATOR PRESCOTT: Thank you Senator Gatsas.

SENATOR BELOW: Thank you Mr. President. I rise in opposition to the committee report of inexpedient to legislate. I think that issue, this bill, merits further consideration. I am not sure that the original bill or the amendment is ready to go as it was, but I do think that at the very least, the question of whether we are going to have allowed trading of mercury reductions should be considered sooner than later because it may affect, even if we stick to the current legislation, it may affect the recommendation of DES as to what they would recommend for a mercury reduction standard. I think at the very least, we should be asking DES to look at what they would recommend for a standard with or without trading of mercury reductions. I think that is significant because some research has indicated that mercury deposition and the effect on wildlife and human health is correlated with the source point. What we do know is that New England and areas in New Hampshire have some of the highest levels of mercury in our water bodies and our loons over anywhere in the whole nation. Thank you Mr. President.

**Question is on the committee report of inexpedient to legislate.**

**A roll call was requested by Senator Cohen.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Morse, Prescott.**

**The following Senators voted No: Below, Foster, Larsen, Estabrook, Cohen.**

**Yeas: 18 - Nays: 5**

**Committee report of inexpedient to legislate is adopted.**

**SB 15, relative to election day registration. Internal Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Boyce for the committee.**

**Internal Affairs**  
**February 11, 2003**  
**2003-0254s**  
**03/10**

### **Amendment to SB 15**

Amend RSA 654:7-a, II as inserted by section 1 of the bill by replacing it with the following:

II. Any person whose name is not on the checklist but who is otherwise a qualified voter shall be entitled to vote by requesting to be registered to vote at the polling place on election day. The voter may then vote at that election. The applicant may be required to produce appropriate proof of qualifications as provided in RSA 654:12. The applicant shall complete an election day affidavit which shall be prescribed by the secretary of state, and which shall contain the following written oath or affirmation:

"My name is \_\_\_\_\_. I am today registering to vote in the city/town of \_\_\_\_\_, New Hampshire.

I understand that to vote in this city/town, I must be 18 years of age, I must be a United States citizen, and I must be domiciled in this city/town.

I understand that a person can claim only one state and one city/town as his or her domicile at a time. A domicile is that place, to which upon temporary absence, a person has the intention of returning. By voting today, I am acknowledging that I am not domiciled in any other state or any other city/town. I understand that if I am domiciled in another state or city/town, I may be entitled to vote in elections held within that state or city/town by absentee ballot.

In declaring New Hampshire as my domicile, I am subject to the laws of the State of New Hampshire which apply to all residents, including laws requiring me to register my motor vehicles and apply for a New Hampshire driver's license within 60 days of becoming a resident.

In declaring New Hampshire as my domicile, I realize that I may be forfeiting benefits or rights, including the right to vote in another state.

If I have any questions as to whether I am entitled to vote in this city/town, I am aware that a supervisor of the checklist is available to address my questions or concerns.

I acknowledge that I have read and understand the above qualifications for voting and do hereby swear, under the penalties for voting fraud set forth below, that I am qualified to vote in the above-stated city/town on this day, and I have not voted and will not vote at any other polling place this election."

Date

Signature

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$4,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

**2003-0254s**

### **AMENDED ANALYSIS**

This bill revises the affidavit requirements for persons registering to vote on election day to require the applicant to acknowledge the implications of declaring residency in New Hampshire.

SENATOR BOYCE: Thank you Mr. President. I move that SB 15 ought to pass with amendment. Senate Bill 15 revises the affidavit require-

ments for persons registering to vote on election day to require the applicant to acknowledge the implications of declaring residency in New Hampshire. The declaration acknowledges that in claiming residency in New Hampshire, there are related responsibilities such as registering your automobile and obtaining a New Hampshire driver's license. The affidavit is consistent with the information contained on the Secretary of State's web site for new voters. Furthermore, the affidavit recognizes that one cannot be a resident of more than one city, town or state and that the person swears under oath that they have not voted and will not vote at any other polling place during this election. The Internal Affairs Committee asks your support for the motion of ought to pass with amendment. Thank you. I would also like to mention that I do have a floor amendment, which changes one word, which will take away a possible 28-A situation on this bill. I would also like to point out that Kathy Salisbury from the University System has expressed her support for this amendment and that she has read it and was in favor of this bill as amended. So I thank you.

SENATOR BELOW: Thank you Mr. President. I rise in support of the amendment. I think that it is an improvement over the original bill and I appreciate the sponsor for bringing it forward. Thank you.

SENATOR ESTABROOK: Thank you Mr. President. The word "student" doesn't appear in this bill but it is pretty clear that the intent is to deal with the "problem of student voting". I acknowledge that on some level there is a problem. Same-day registrations in Durham challenge our town clerk and her staff, and working with voter checklists that have a large number of voters who are no longer domiciled in Durham is a challenge for candidates, but I believe that this bill creates more problems than it solves. It is overkill. The first difficulty is the approach it takes to intimidate prospective student voters. This is not the approach that we should be taking with our youngest voters. Rather, as is successfully done elsewhere, voter education efforts and active provision of absentee balloting opportunities provide an effective alternative, which encourages not discourages civic involvement. Another is the unknown set of implications of the bills requirements. Will students registering cars in New Hampshire be able to obtain auto insurance under their parents policies? Will students recognize the terms of their out-of-state financial aid with regard to domicile requirements? Why put them in a position of losing aid? Finally, there is the broad discretion granted local officials in deciding from whom to request identification. Haven't we recognized the need to provide uniform balloting procedures for everyone? I urge you not to adopt this bills provision as New Hampshire election law.

SENATOR LARSEN: Not to long ago, Governor Benson spoke of our children as our future. His plans called for educating them in New Hampshire and keeping them here. This idea was greeted with standing applause by all of us. So why today, are we discouraging those very young adults that we want to encourage to be active participants in New Hampshire from exercising their right to vote? Why is it that we seem to see a leadership thrust to strip students of their constitutional rights to vote? We heard our Speaker next door say that it is not right to have college students having any say in our elections. Is it not our goal to encourage young people to be more active in the political process? Do we not want them to learn that through exercising their democratic right to vote that they can become valuable participating members of a community? Are students targeted because their education ends at a specific

time? We already know that the average American family moves every 5.2 years. A student oftentimes lives in one place for four years. It is also at odds with the Governors budget address, if his policies will keep students in New Hampshire after they graduate, why not encourage them to develop the valuable habit of voting while here and at a young age? I also have concerns with the threatening language of this bill. Voting becomes frightening when a person must risk a Class A misdemeanor to go in and vote. Asking a person to read and agree to a legal document on the spot is intimidating enough. Combined with the penalties listed in the registration form, potential voters will certainly be frightened away. Should not a fiscal note be attached to this bill if a misdemeanor is included? Counties may have to spend as much as \$25,000 an individual to incarcerate someone for a year. I question the legality of SB 15. The Supreme Court has ruled that poll taxes and literacy tests are unconstitutional. By requiring students to buy a New Hampshire driver's license and pay to register their cars here, aren't we taxing their right to vote? By requiring students to interpret a lengthy affidavit, aren't we testing their ability to read, and this isn't just students, it is all people who are trying to register at the polls and testing their ability to comprehend rather than their honest intent to legally participate in our democracy. College students play an important role in our towns. They are the volunteers who teach our children's classrooms, who provide companions to lonely elderly, who work to protect the environment. We heard from city clerks, including from Keene and Manchester who noted that they opposed the bill. That they recognize that students contribute to the census data providing extra funding for our towns and actually counting in the number of representatives who sit here and next door. Any student who has enough interest to become educated about their candidates and go out and vote in elections, should be encouraged to do so without being threatened for loss of financial aid scholarships or insurance benefits. The real question is: What are we afraid of? We haven't seen great issues of voter fraud in this state. Students vote on both sides of the ticket. I actually think that you may be killing the very goose that laid your leadership egg, so I think that it is something to consider. I have a floor amendment, which I will offer subsequently, but I have great concern for this bill having a chilling affect on the voting interest of our young people in this state and I am not sure that is the message that we want to send the young people of this state. Thank you very much.

SENATOR D'ALLESANDRO: Thank you Mr. President. I think that the Clerks and I speak for the Clerk in Manchester, did bring forth a situation where we have many, many, many of these affidavits already printed and we do get pretty good voter registration, same day registration. Because of this, it would have a negative financial impact on the city of Manchester. That was for the record, so I reiterate that. Let me talk about voting, because I think that voting is a constitutional right and it is a privilege. In this country, what we have done is that we have tried to emphasize participation in voting. We passed the Civil Rights Act in 1964 because we recognized that there was discrimination across this nation in allowing people to register to vote. I might say that in a district that I represented as a member of the Executive Council, you had to go to the city clerk or the town clerk and present your passport in order to register to vote. We have done away with those kinds of situations. We did away with the Head and Poll tax because we said that it was unconstitutional for people to have to pay for the right to vote be-

cause it was a constitution right, it was a constitutional privilege. I am going to speak to you as a teacher. I spent 40 years of my life teaching. I taught Civics. I taught History and I taught involvement to my students. I encouraged all of my students to go to college because I thought that that was the way to succeed in this life, to go on and build on your education and become an active member of society, become a participant in society. We, in New Hampshire, pride ourselves on living by the rules and we have the rules in place. We encourage voter participation. I know that the Secretary of State, who by the way is a former student of mine, at Bishop Bradley High School when he was 13 years of age, says that voter participation in New Hampshire is something that we are very proud of. When we talk about voter participation, we, through the eloquence of our Governor and our elected officials, indicate, "we, have had more people vote in the last election that voted around the country" because we thought that it was important to vote. So now we bring forward a change in the affidavit. In the last sentence of the affidavit of the last paragraph of the affidavit says "if this is found to be fraudulent you get a \$4,000 fine and you can go to prison for a year". There are people who come to Manchester and who vote on election day that when looking at that affidavit are not going to vote, they are going to turn around and walk away. They do not understand when they see something like this, it strikes fear in the hearts of the participant. Is that what we are all about in democracy, scaring people? Are we afraid to let people participate in the process? We all talk about a one hundred percent participation. That is our goal since the election of 1960. Participation in the elections has been on a steady decline in this country. A decline. People have lost faith in the process. This is an obstacle to participating in the process. Why, in a country that craves participation, do we put up obstacles to participation? Have there been significant voter fraud cases in New Hampshire? I haven't heard anybody say that New Hampshire, Manchester, New Hampshire is like Chicago, Cook county, which has a terrible reputation, but I have yet to hear one national person say that the voter fraud in Manchester, New Hampshire is so bad that we now have an affidavit that says that if you fraudulently sign up, you are going to get a \$4,000 fine and you are going to go to jail for a year. What are we thinking about? What, please God, are we thinking about? We want people to vote. We want people to understand that voting is their ticket. It is their ticket to bringing people into elective office who are going to represent them and their ideas. Anything that we do, that in any way inhibits that situation, is something that we, as elected officials can't be proud of. I don't think that this is the right thing to do. We have an affidavit in place. People sign that affidavit. They do it in Manchester. They do it in every town in this state. Every city in this state. Isn't enough, enough? Thank you Mr. President.

SENATOR PRESCOTT: Thank you Mr. President. The bill as I have read it, will help in a, not in terms of reading the situation that occurred in Newmarket this fall. Many students from UNH came to vote and many turned away because they realized that in conversation, not in terms of reading the affidavit, in conversation, realized that they may be in jeopardy of losing their scholarship from being an out-of-state tuition waiver or whatever it may have been. They decided at that point, from conversations with people, that they should not vote. I believe that this legislation clears that up, so that they can clearly read this. I have read it. It is straightforward and is a step in the right direction to protect those students that may find themselves doing the wrong thing.

SENATOR CLEGG: Thank you Mr. President. I rise in favor of the bill as amended. Someone asked, "is there voter fraud"? Yes, there is. I participated in a study committee over the summer. We sat there and said to the Attorney General, "what would it take for you to prosecute"? They gave us a list of what it would take. We gave them eight signed confessions from people who wrote to their city clerk and said "my apologies. I know I shouldn't have signed up to vote in your community. I got caught up. I am not domiciled in New Hampshire. I don't live there and I want you to take my name off of the list". Today, the Attorney General's office still says that there is nothing that they can do with these cases because they call the people and ask them to come to Concord to talk to us and they don't want to. So there is no prosecution. Now let me tell you about the mother from Alaska who called two elections ago and said, "how could you people in New Hampshire do this? You had my child go in, declare themselves a resident of the state of New Hampshire and now Alaska will no longer pay for their college education. How could you do that"? The only answer that we had was that we didn't do it. Your child did it. "Well there is nothing on that form that says that my child would lose their benefits". This new affidavit says that "you declare yourself a citizen of the state of New Hampshire, in a certain community, then you have to follow all of the laws and rules and regulations of every other New Hampshire citizen." There is no reason now, if you are using this affidavit, you can go and say that you didn't know that. It says, "I acknowledge, I am not domiciled in any other state". It says "I will comply with all of the laws or I am subject to the laws of the state of New Hampshire including laws that require me to register my motor vehicle here". That is required of everybody. "I will get a New Hampshire driver's license within 60 days". That is the law too. It says "I realize that I may be forfeiting benefits or rights, including the right to vote in another state". Understand it, up front, that when you sign this and say that you are going to be a resident of the state of New Hampshire you are only entitled to what all citizens in the state of New Hampshire are entitled to. You can't have your Alaska scholarship as a citizen of Alaska and have a New Hampshire domicile. It just doesn't work that way. The cost? Well if you look in the floor amendment, which I don't know if everyone has it, it says that the forms are going to be supplied by the Secretary of State. So I don't see any costs there. But I can tell you that this is the same requirement for all. I want to talk about voter participation going down. I don't believe that people have lost faith in the process. I think that they have lost faith in the participants. We see too often how costly it is to run. I think that deters people from actually going forward and putting their name on a ballot. I don't think that this helps or hurts that either way, but what this does say to people is take your responsibility seriously. You only get to vote in one spot. If you want to remain a citizen of the state of Connecticut, every state in the union has absentee balloting, use it. If you are becoming a citizen of the state of New Hampshire and you are going to participate in our elections, then understand what your rights are, what you forfeit from the others and what is expected of you as a responsible citizen of New Hampshire. Thank you Mr. President.

SENATOR FLANDERS: Thank you Mr. President, I have heard testimony here today that we are taking the voting rights away from someone. Please, that is not true. That is what absentee voting is all about. I have been moderator in Antrim for 34 years and every time that we have an election, we have absentee ballots from students who live in

Antrim who have gone off to school and they find a way to vote, so don't be influenced by the statement that we are taking the voting rights away from somebody by signing an affidavit. Thank you.

SENATOR COHEN: Thank you Mr. President. I am pleased actually, that the town of Newmarket was brought up. As you all know, that used to be a part of my district. It is a wonderful town, a great community and I miss it very much, to be perfectly honest. It reminds me of what this bill is about. This is part of a concerted effort as we all know, which has been going on for a long time to disenfranchise students. I don't think that there is any question about that, we all recognize that. The age was lowered many years ago, in the 1970's I believe, to 18 because we wanted students to participate. I think that we all recognize that too many of our students already don't necessarily feel as much part of the citizenry, meaning that they actually participate in self-government. Too many people don't feel connected to their government. It is very important that we convey to our young people between the ages of 18 and 21 that government is for them. That this is self-government. That they should participate. The fact that there is language in there that certainly will have a chilling effect. The confusion about car registration. A lot of students are driving cars but they are owned by their parents, I mean that is reality here. This may confuse people and it will certainly have, and I believe that if we are honest with ourselves, this is intended to have a chilling effect on students voting. We need more people to participate in self-government. We need more democracy not less. I urge my colleagues to defeat this bill as amended. Thank you.

SENATOR BOYCE: I rise to speak for a second time. I would just like to point out that on the Secretary of State's web page today, there is information: Voting as a College Student. On there it points out that as a college student, from somewhere else, wherever, from their home town, wherever that is, they are allowed to register as an absentee. Most states you can register by mail, but in fact, some states you can actually register online, through the Internet. It also points out that as a new voter, registering to vote, and changing their legal address to wherever they are voting from, there may be some things that they want to consider. Some of the changes that changing their permanent address might effect is their health insurance, their car insurance, their car registration, their filing of their income taxes, their driver's license, their AAA membership, a scholarship, depending on residency in one state, for instance Alaska. It goes on to say that "if you desire to change your principal place of residency to New Hampshire, that you may register to vote by showing proof of age and residency to the town clerk"; however, you will also be expected to then register your car, change your driver's license and the other things that are required of New Hampshire citizens. This is all currently on the web page, and in fact, I believe that it is posted in the polling places by the Secretary of State's office, in many of the polling places. As far as the chilling effect of the information at the bottom about the fine, the potential fine...that fine is there now and I think to have them sign an affidavit that does not include the fact that signing this affidavit could subject them to a penalty if they lie on this affidavit, I think that that would be an injustice to let them sign something that they think has no binding effect, no legal effect, where in fact it does. As far as the penalties on this are concerned, there is one other penalty that a lot of college students may not even consider. That penalty is that if you commit voter fraud in the state of New Hampshire,



you cannot run for this Senate or for the House. You are prohibited from running for office if you have been convicted of voter fraud. It is one of the few things that will disqualify you for running for either the House or the Senate. I think that putting on there that there are penalties involved if you lie on this affidavit, I think, is simply prudent and is protecting them from doing something that they may actually regret later. I ask that this be passed. Oh, and the floor amendment that I do have, does address **TAPE CHANGE**

**SENATOR LARSEN:** That in accordance with RSA 659:34 "The penalties for knowingly or purposely providing false information when registering to vote is a class A misdemeanor with a maximum sentence of imprisonment or not to exceed one-year and a fine not to exceed \$4,000". That is not what RSA 659:34 says. In fact, that is entirely new language on penalties. If you look up 659:34 it addresses wrongful voting and says that "A person is guilty of a misdemeanor". It does not in fact, detail the penalties and fines and imprisonment that this appears to cite. I have questions on the actual amendment and its references in that it appears to imply that we are simply stating the language of the law in 659:34 when in fact, we are writing new penalties out for voters to have to sign their understanding of. Here again, it is incredible, not just for students, it is frightening for any person who comes in, perhaps as a new voter, and coming in and having to sign an affidavit like this. If I were a new voter, I would be very hesitant to sign this because I wouldn't know what I was forfeiting in terms of benefits or rights. It is very vague in that. I certainly wouldn't want to worry about if I somehow were found to be providing false information, what if I put down the wrong telephone number? There are many concerns that a new voter might have that they would end up leaving the voting place because of these fears. I did in fact, on election day, had someone working on a ceiling in my house and he was about 45 years old. He said, "you know, I can't vote today because I am too nervous to go in. I don't know the process and I am afraid of making a fool of myself". He said that we really "ought to be educating people at an early age how to vote because I don't know what I would face behind that booth and I am scared to do it". We are making it a very fearful process here. I question this citing of RSA 659:34 because it does not in fact, impose the penalties. These are new penalties, at least they are certainly chilling penalties. I object to them. Thanks.

**Recess.**

**Out of recess.**

**Senator Larsen requested a roll call.**

**SENATOR PETERSON:** Mr. President, parliamentary inquiry?

**SENATOR EATON (In the Chair):** Parliamentary inquiry.

**SENATOR PETERSON:** What is the amendment that we are voting on?

**SENATOR EATON (In the Chair):** The amendment is to the original bill.

**SENATOR PETERSON:** The amendment to the original bill?

**SENATOR EATON (In the Chair):** It is the original...

**SENATOR PETERSON:** As it exists?

**SENATOR EATON (In the Chair):** As it exists.

**SENATOR D'ALLESANDRO:** Thank you Mr. President. Further clarification. When you say the amendment as it is, you are talking about the amendment that is in the calendar?

SENATOR EATON (In the Chair): Is in the bill now.

SENATOR D'ALLESANDRO: Further question.

SENATOR EATON (In the Chair): In the calendar.

SENATOR D'ALLESANDRO: In the calendar. Further question.

SENATOR EATON (In the Chair): It will be opened to further amendment.

SENATOR D'ALLESANDRO: Oh, okay. Thank you.

SENATOR LARSEN: Mr. President, is it possible to withdraw the request for a roll call and to ask for a subsequent roll call on a different...on one of the amendments?

SENATOR EATON (In the Chair): Yes it is.

**Senator Larsen withdrew her request for a roll call.**

**Amendment adopted.**

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist. 15

**February 19, 2003**

**2003-0345s**

**03/05**

### **Floor Amendment to SB 15**

Amend the title of the bill by replacing it with the following:

AN ACT relative to election day registration and relative to encouragement of voter registration and participation in the electoral process.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 New Subdivision; Encouragement of Registration and Participation.

Amend RSA 652 by inserting after section 22 the following new subdivision:

#### **Encouragement of Registration and Participation**

652:23 Encouragement of Registration and Participation. The secretary of state shall implement, with the participation of town and city clerks, an annual program designed to encourage voter registration and participation in the electoral process by students in high schools, colleges, and universities.

**2003-0345s**

### **AMENDED ANALYSIS**

This bill revises the affidavit requirements for persons registering to vote on election day to require the applicant to acknowledge the implications of declaring residency in New Hampshire. This bill also requires the secretary of state to implement a program to encourage voter registration and participation in the electoral process.

SENATOR LARSEN: Mr. President, I have a floor amendment that I would like distributed to SB 15. As we are passing it out, I will explain. The floor amendment encourages the registration and participation through the Secretary of State. It says, "The Secretary of State shall implement with the participation of the town and city clerks an annual program designed to encourage voter registration and participation in the electoral process by students in high schools, colleges and univer-

sities. What we do know is that people who have been educated early, people who have been educated how to vote in their early years, will take that with them through life. We have heard that oftentimes at high schools, the students don't know how to participate or how to fill out a ballot. They can, at various places, this is an open-ended encouragement, they can encourage students to learn about the process and sign up and register to vote through that effort. This is, I think, an important step if we are going to begin to say that you have to fill out affidavits that people ought to understand before they get into the voting place, what their requirements are as voters in this state. So voter education is clearly important in our schools and colleges. Things like the website that was cited as a way for people to know what their requirements are as voters, would be taught early, not in a threatening way, the day of the vote. I encourage you to support the SB 15 floor amendment as distributed to you at this point. Thank you.

SENATOR PRESCOTT: Senator Larsen, this says that we are going to vote on this amendment to replace the bill that we just passed?

SENATOR LARSEN: Well it makes a lot more sense than passing the affidavit. We can...the way that it is written, in fact, it does insert after section one and rennumbers the original section two to read as three, so it is an insert rather than a substitute.

SENATOR PRESCOTT: So it is just adding onto the bill that we have already passed. It is not a replacement of the bill.

SENATOR LARSEN: This bill amends the title of the bill, and then it amends the bill by inserting after section one, so it retains section one and rennumbers the original section two to read as three. So my understanding is it amends the original SB 15.

SENATOR O'HEARN: I have two questions of Senator Larsen. We both sit on the Civic Education Committee and recognize that this type of program is being studied by this commission. Being familiar with that, do you think that this is then not looking at the whole picture of having everyone learning how to vote, not just students?

SENATOR LARSEN: I think that what we are trying to do is to encourage young people in this amendment. For young people to learn the process and to encourage them to register and to participate when they are qualified voters at age 18. We clearly have an issue, a broader issue of the general public's involvement in the electoral process and in voting. All of those issues we can continue to study, but this is one way that we can encourage registration and participation by young people, and that was the attempt of this amendment.

SENATOR O'HEARN: The Secretary of State shall implement an annual program with our town and city clerk's. What will the cost of that be to the state?

SENATOR LARSEN: I believe that there can be...that it can be incorporated into student events in a low cost way. It may mean that the city clerk or the town clerk would have to go to, on an annual basis, go to an occasion of a meeting of students where you could offer encouragement in registration and participation. I don't believe that there is a high cost to this because it would be done on town or city clerk time with the cooperation of the Secretary of State to make it an efficient way to encourage people to register to vote. So I don't believe that there is a large fiscal effect, in fact, I doubt if there is much of any fiscal effect. It is the

job of town and city clerks to register people and they do, oftentimes, hold drives in nursing homes and various places around their communities, to add schools or universities, if that is within their boundaries, is fully within the realm of what they probably already do in other locations.

SENATOR O'HEARN: Thank you Mr. President. I rise to speak. In light of having those questions answered, I am opposing this amendment. I think that it is redundant. It is not that we don't want to encourage our young people to vote I see this as an unfunded mandate on our towns and city clerks to start a program in the schools. We have a Commission on Civics Education that has been meeting for the past year. The Commission on Civics Education is not only looking at the civics courses that are in our schools, looking at what type of testing is in our NEAP tests. We are also looking at the whole picture. We are looking at what it takes to make sure that we have all people voting at all times. It starts at home encouraging our children to vote at home. It starts with civic organizations whether it is the Rotary Club or the Lions Club, it is bringing in people that are immigrants and bringing them into the process so that they become naturalized citizens and not be fearful of the voting process. This is a whole program that we already have in place and I think to put this into law is not the appropriate place at this time. Thank you.

SENATOR GREEN: I am looking at what we just voted on, the amendment, which is in the calendar. This amendment, as I look at it, amends the original bill, so I would considered it to be out of order. It is not amending the amendment that is on the floor, is that correct?

SENATOR EATON (In the Chair): It is amending the bill.

SENATOR GREEN: Okay, thank you.

SENATOR SAPARETO: It is my understanding then that if we....whether we pass this or not, that the subsequent amendment would say 'replace' and I haven't seen the further amendments, which say that it would 'replace all of the following afterwards' so that whether this is adopted or not adopted, would become a moot point if the subsequent amendment was adopted as well.

SENATOR EATON (In the Chair): It would still be open for further amendment.

SENATOR PRESCOTT: Thank you Mr. President, I have a question of Senator Larsen. The annual program designed to encourage voter registration and participation. Is there an outline or going to be an oversight committee that is going to review this or anything like that?

SENATOR LARSEN: The Secretary of State currently has the overall authority for encouraging or holding voter registration and participation, encouraging participation in the electoral process. We felt that it was important to leave the details of such a program up to them to work out with the town and city clerks in such a way that they could keep it within the abilities of the town and city clerks within their existing system so that it wouldn't in fact, be a huge program, it would just be what is a voter registration drive and public information drive that would encourage people to learn about how to vote. I don't believe that the Secretary of State would want us to detail in any greater detail, how to do that. I think that he knows fully well how to do it.

SENATOR PRESCOTT: Thank you Mr. President. Is the Secretary of State, since he has this jurisdiction already, doing this?

SENATOR LARSEN: It is my understanding that there is no impetus right now to do it at schools and colleges and universities. There may be those clerks who do that on their own and there is no all-out effort to do that in the high schools across the state and this would encourage that kind of program to begin, at least on an annual basis.

SENATOR PRESCOTT: Thank you Senator.

### **PARLIMENTARY INQUIREY**

SENATOR PRESCOTT: Mr. President, I have a parliamentary inquiry. If I am in favor of participation of the voter registration and the programs that the Secretary of State has the ability to do, would I vote for this, to have them do it again or would I vote against this knowing that he is already doing it?

SENATOR EATON (In the Chair): If you are in favor you will vote yes. If you are not in favor you will vote no.

SENATOR PRESCOTT: Thank you very much, Mr. President.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator D'Allesandro.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 6 - Nays: 17**

**Floor amendment failed.**

Senator Boyce offered a floor amendment.

Sen. Boyce, Dist. 4

**February 20, 2003**

**2003-0385s**

**03/10**

### **Floor Amendment to SB 15**

Amend RSA 654:7-a, II as inserted by section 1 of the bill by replacing it with the following:

II. Any person whose name is not on the checklist but who is otherwise a qualified voter shall be entitled to vote by requesting to be registered to vote at the polling place on election day. The voter may then vote at that election. The applicant may be required to produce appropriate proof of qualifications as provided in RSA 654:12. The applicant shall complete an election day affidavit which shall be supplied by the secretary of state, and which shall contain the following written oath or affirmation:

"My name is \_\_\_\_\_. I am today registering to vote in the city/town of \_\_\_\_\_, New Hampshire.

I understand that to vote in this city/town, I must be 18 years of age, I must be a United States citizen, and I must be domiciled in this city/town.

I understand that a person can claim only one state and one city/town as his or her domicile at a time. A domicile is that place, to which upon temporary absence, a person has the intention of returning. By voting today, I am acknowledging that I am not domiciled in any other state

or any other city/town. I understand that if I am domiciled in another state or city/town, I may be entitled to vote in elections held within that state or city/town by absentee ballot.

In declaring New Hampshire as my domicile, I am subject to the laws of the State of New Hampshire which apply to all residents, including laws requiring me to register my motor vehicles and apply for a New Hampshire driver's license within 60 days of becoming a resident.

In declaring New Hampshire as my domicile, I realize that I may be forfeiting benefits or rights, including the right to vote in another state.

If I have any questions as to whether I am entitled to vote in this city/town, I am aware that a supervisor of the checklist is available to address my questions or concerns.

I acknowledge that I have read and understand the above qualifications for voting and do hereby swear, under the penalties for voting fraud set forth below, that I am qualified to vote in the above-stated city/town on this day, and I have not voted and will not vote at any other polling place this election."

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Date

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Signature

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000.

**2003-0385s**

#### AMENDED ANALYSIS

This bill revises the affidavit requirements for persons registering to vote on election day to require the applicant to acknowledge the implications of declaring residency in New Hampshire.

SENATOR BOYCE: While the amendment is being distributed, I will point out the changes that are in this amendment. As I mentioned earlier, this would take care of the 28-A issue because this says that the affidavit would be supplied by the Secretary of State. The original amendment said that it would "as specified by the Secretary of State", so this does say that the Secretary of State's office would be doing it, would be supplying those. So any existing affidavits would be unnecessary and the costs would be borne by the Secretary of State's office. The other change that this makes is down at the bottom of page, line 31 and onto the next page. In the original committee amendment, I was relying on information from someone in the Attorney General's office that that language was in compliance with statute. Apparently what that language was from was from a study that was done over the summer and they were recommending changes to that statute, which were not contained in that bill. So rather than make those changes that were in that study bill, this amendment has changed it to what a class A misdemeanor actually has for penalties, which is "with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000". That is all that it says on the bottom. So that is to clear up the situation. There was a misunderstanding. The Attorney General's office representative that gave me that language took it from a House Bill that was part of that study and apparently there is more to that study than this section. I would ask that this be passed.

SENATOR D'ALLESANDRO: Thank you Mr. President. Senator Boyce, now that you are giving the responsibility for the affidavit to the Secretary of State, is there an item in the budget that covers the cost of this?

SENATOR BOYCE: This will be going to the Finance Committee I understand, because of this change, so we will get to discuss that in the committee.

SENATOR D'ALLESANDRO: But at the present time, there is no funding for this that currently exists?

SENATOR BOYCE: There may not be and we have not discussed that with the Secretary of State yet, but it will go to Finance so we will be able to hash that out thoroughly.

SENATOR D'ALLESANRO: Thank you.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 77**, relative to bond votes in school districts with official ballot voting procedures. Internal Affairs Committee. Ought to pass, Vote 3-1. Senator Flanders for the committee.

### **MOTION TO TABLE**

Senator Flanders moved to have **SB 77**, relative to bond votes in school districts with official ballot voting procedures, laid on the table.

**Adopted.**

### **LAID ON THE TABLE**

**SB 77**, relative to bond votes in school districts with official ballot voting procedures.

**SB 172-FN**, increasing certain fees charged by the secretary of state. Internal Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Kenney for the committee.

**Internal Affairs**

**February 12, 2003**

**2003-0280s**

**08/01**

### **Amendment to SB 172-FN**

Amend the bill by replacing section 1 with the following:

1 Department of State; Fees. Amend RSA 5:10 to read as follows:

5:10 Office Fees. Except as otherwise provided, the following fees shall be paid to the secretary of state for the use of the state: For every commission issued to a justice of the peace or to a notary public, \$50; for every certificate pertaining to the existence of a corporation, trade name, or other business entity, or writ served on the same, \$5; for every such certificate in long form, \$10; *apostilles and certificates for notaries public and justices of the peace, \$10*; for every other certificate under seal of the state, \$5; for engrossing private acts, \$1 for each page of 240 words; *a fee of \$25 for expedited service of every 10 documents or part thereof.*

SENATOR KENNEY: Thank you Mr. President. I move SB 172-FN ought to pass with amendment. Senate Bill 172 raises certain fees charged by the Secretary of State and would increase revenues to the general fund by approximately \$85,000 annually. The adjusted fees contained in this legislation would more realistically reflect the cost of providing the ser-

vices. The committee amendment merely corrects a minor spelling error. The Internal Affairs Committee asks your support of the motion of ought to pass as amended on SB 172. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 53**, establishing an advisory board to the labor commissioner and relative to the membership of the compensation appeals board. Insurance Committee. Ought to pass with amendment, Vote 5-0. Senator Flanders for the committee.

**Insurance**

**February 12, 2003**

**2003-0275s**

**01/09**

**Amendment to SB 53**

Amend the title of the bill by replacing it with the following:

AN ACT establishing an advisory board to the labor commissioner and relative to the terms of the members of the compensation appeals board.

Amend RSA 281-A:42-aa, I(a) as inserted by section 1 of the bill by replacing it with the following:

(a) One member representing labor, appointed by the commissioner from a list of nominees provided by the New Hampshire organized labor groups.

Amend RSA 281-A:42-aa, IV(c) as inserted by section 1 of the bill by replacing it with the following:

(c) Receive complaints from the commissioner, pursuant to RSA 281-A:42-e, regarding current appeals board members.

Amend the bill by replacing all after section 1 with the following:

2 Workers' Compensation; Appeals Board; Term of Members Changed.

Amend RSA 281-A:42-a, I to read as follows:

I. There is established a compensation appeals board. The board shall consist of a pool of 33-members, of which 11 members shall represent labor, 11 members shall represent employers or workers' compensation insurers and 11 members shall be attorneys who shall be neutral. Members of the board shall be appointed by the governor and council from a list of nominees submitted by the commissioner. The commissioner shall submit at least 2 nominees for each vacancy to be filled. Any person appointed by the governor and council who is not qualified or who ceases to be qualified in the capacity in which such person is serving on the appeals board shall be replaced by the governor and council. Terms of board members shall be [4] 3 years, except the initial appointments shall be staggered so that no more than 1/3 of the members' terms shall expire in the same year. Members of the board shall have at least 5 years' experience in the area of workers' compensation. As a condition to maintaining eligibility to hear appeals, board members shall have at least 20 hours annually of training and briefing in the area of workers' compensation and relevant disciplines. The commissioner, or designee, with the assistance of the attorney general's staff shall supervise and approve the training. The commissioner shall have the authority to suspend the eli-



gibility of any member of the board who is not in compliance with such annual training requirements, and to reinstate such member's eligibility upon compliance. Appeals from a decision of the commissioner or the commissioner's representative shall be heard de novo by a three-member panel, composed of an attorney who shall serve as chair, one member representing labor and one member representing employers or workers' compensation insurers. At least two like votes shall be necessary for a decision by the panel. The board shall hear appeals, in accordance with RSA 281-A:43, I(b), from the decisions of the commissioner made pursuant to RSA 281-A:43. No person who is an interested party or an employee of an interested party shall participate as a member of the panel. The board shall conduct its proceedings in such a manner as to ensure a fair and impartial hearing.

3 New Section; Complaints Regarding Compensation Appeals Board Members. Amend RSA 281-A by inserting after section 42-d the following new section:

281-A:42-e Complaints Regarding Compensation Appeals Board Members. Any participant involved in the appeals process who has a complaint concerning the conduct of any member of the compensation appeals board shall write to the commissioner of labor stating such complaint. The commissioner shall investigate the complaint and, if the commissioner determines the complaint is valid, take such corrective action as is warranted. The commissioner shall make a list of the complaints filed against a member of the appeals board available to the advisory board, established in RSA 281-A:42-aa, when that appeals board member is being considered for nomination for a new term.

4 Effective Date. This act shall take effect January 1, 2004.

**2003-0275s**

#### AMENDED ANALYSIS

This bill establishes an advisory board to the labor commissioner which shall evaluate candidates for the compensation appeals board. The bill also changes the term of the members of the compensation appeals board.

SENATOR FLANDERS: Thank you Mr. President and the Senate. I will try to be brief because I know that we are running late and we have some meetings this afternoon. This bill is the result of a study committee that went and met during the summer. I presented the bill for the study committee as the result of having spent some time in the Insurance business. I was confronted by both plaintiffs and defense attorney's that some help was needed at the appeals board level. That problem being, getting more qualified people on the appeals board. This is a compromise bill because there are people on the committee who wanted to completely do away with this system and there were those that wanted to go back to the court system and there were those that didn't want to do anything. So therefore, as a result of a compromise, I am pleased to say that it came out of committee 5-0 ought to pass. What we have basically done is we have put up a committee to be appointed, no politics. The President and the Speaker did not appoint this board. The Labor Unions are going to appoint members, the Justice Association, the Bar Association, the attorney's and business and industry are going to appoint people to search out in their field, the qualified people to give their name to the commissioner, who in turn, will give it to the Governor for approval of the Appeals Board. Just lastly, I did present this bill to the Bar Association where both sides were there, the plaintiffs and the defense.

They both think that it is a good idea. Both sides think that it is something that they should pass and give it a chance to work. I appreciate your vote.

**SENATOR D'ALLESANDRO:** Thank you Mr. President. Senator Flanders, if I am reading this correctly, the commissioner receives nominations from this Advisory Committee then does the commissioner chose from these two names that he gets, the person that he believes should be brought forth for nomination or how does that work?

**SENATOR FLANDERS:** That is correct. There was a lot of discussion on whether the ...to take the commissioner completely out of it. We came to the conclusion that the commissioner is the chairman of the Advisory Board and the names will be given to the commissioner. He in all rights can refuse those names. He does choose from the names that he is given. He chooses what name goes to the Governor. I beg your pardon, "he or she".

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 39**, relative to the results of a preliminary breath test as evidence in court. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Peterson for the committee.

**Senate Judiciary**  
**February 13, 2003**  
**2003-0309s**  
**03/04**

### **Amendment to SB 39**

Amend the bill by replacing all after the enacting clause with the following:

1 Off Highway Recreational Vehicles; Preliminary Breath Tests. RSA 215-A:11-i is repealed and reenacted to read as follows:

215-A:11-i Preliminary Breath Tests.

I. Any law enforcement officer, who has been certified by the police standards and training council according to standards for such certification contained in rules adopted by said council pursuant to RSA 541-A, having reasonable grounds to believe that a person has been driving or operating an OHRV while under the influence of intoxicating liquor or controlled drug, or while the person's alcohol concentration was 0.08 or more, or in the case of a person under the age of 21, 0.02 or more may, without making an arrest, request that such person submit to a preliminary breath test for alcohol concentration to be administered by the officer. The results of any test administered under this section may be introduced into evidence in a court for any relevant purpose. Failure to submit to the test shall not constitute a violation of this chapter. Evidence of failure to submit to a preliminary breath test shall not be admissible in court in any prosecution under this chapter, except for the purpose of determining whether the officer had probable cause to arrest the person. The provisions of this section shall not limit the introduction of any other competent evidence bearing on the question of whether a person charged with violating RSA 215-A:11 was under the influence of intoxicating liquor or any controlled drug. Nothing contained in this section shall be construed to prevent or require

a subsequent test pursuant to RSA 215-A:11-a. The law enforcement officer requesting the test shall advise orally the person to be tested that his or her failure to take the test or his or her taking of the test shall not be construed to prevent or require a subsequent test pursuant to RSA 215-A:11-a. The results of the test shall be furnished immediately to the person tested by the law enforcement officer administering the test and in writing, if requested.

II. No device may be used to give a chemical test under the provisions of this section unless it has been approved as to type and make by the department of health and human services.

III. The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, relative to methods and procedures for evaluation and approval of preliminary breath test devices.

2 Serious Traffic Offenses; Preliminary Breath Test. Amend RSA 265:92-a, I to read as follows:

I. Any police officer, who has been certified by the police standards and training council according to standards for such certification contained in rules adopted by said council pursuant to RSA 541-A, having reasonable grounds to believe that a person has been driving or operating a vehicle on a way while under the influence of intoxicating liquor or controlled drug or while the person's alcohol concentration was 0.08 or more or in the case of a person under the age of 21, 0.02 or more may, without making an arrest, request that such person submit to a preliminary breath test for alcohol concentration to be administered by the officer. The results of ~~[this test may be admissible in evidence for the sole purpose of determining whether the officer had probable cause to arrest the person]~~ ***any test administered under this section may be introduced into evidence in a court for any relevant purpose.*** Failure to submit to the test shall not constitute a violation of this chapter. ***Evidence of a failure to submit to a preliminary breath test shall not be admissible in court in any prosecution under this subdivision, except for the purpose of determining whether the officer had probable cause to arrest the person. The provisions of this section shall not limit the introduction of any other competent evidence bearing on the question of whether a person charged with violating RSA 265:82, I(a) or RSA 265:82-a, I was under the influence of intoxicating liquor or any controlled drug.*** Nothing contained in this section shall be construed to prevent or require a subsequent test pursuant to RSA 265:84. The police officer requesting the test shall advise orally the person to be tested that his or her failure to take the test or his or her taking of the test shall not be construed to prevent or require a subsequent test pursuant to RSA 265:84. The results of the test shall be furnished immediately to the person tested by the police officer administering the test and in writing, if requested.

3 Boating While Intoxicated; Preliminary Breath Tests. Amend RSA 270:57, I to read as follows:

I. Any authorized agent or any peace officer who has been trained and certified according to standards for such training and certification set by the police standards and training council and contained in rules adopted by the said council pursuant to RSA 541-A, having reasonable grounds to believe that a person has been operating or was in control of a boat upon the public waters of the state while under the influence of intoxicating liquor or controlled drugs or any combination of intoxicating liquor or controlled drugs may, without making an arrest, request that such person submit to a preliminary breath test to be administered

by the officer. The results of [~~this test shall not be admissible in evidence by the prosecution, and~~] ***any test administered under this section may be introduced into evidence in a court for any relevant purpose.*** Failure to submit to the test shall not constitute a violation of this chapter. ***Evidence of a failure to submit to a preliminary breath test shall not be admissible in court in any prosecution under this subdivision, except for the purpose of determining whether the officer had probable cause to arrest the person. The provisions of this section shall not limit the introduction of any other competent evidence bearing on the question of whether a person charged with violating RSA 270:48-a, I was under the influence of intoxicating liquor or any controlled drug.*** Nothing contained in this section shall be construed to prevent or require a subsequent test pursuant to RSA 270:49. The officer requesting the test shall advise the person to be tested that his ***or her*** failure to take the test or his ***or her*** taking of the test shall not be construed to prevent or require a subsequent test pursuant to RSA 270:49. The results of the test shall be furnished forthwith to the person tested by the officer administering the test.

4 Effective Date. This act shall take effect January 1, 2004.

SENATOR PETERSON: Thank you Mr. President. I move SB 39 ought to pass with amendment. Senate Bill 39 eliminates the provision that preliminary breath test results may be admissible in evidence for the sole purpose of determining whether the officer had probable cause to arrest the person. Preliminary breath tests are now recognized as a reliable means of determining alcohol content and are an important enforcement tool. Eight hundred ninety-four preliminary breath test machines have been purchased with federal grants and are available to the state police, Fish and Game officers, sheriffs and local police departments. Being able to administer this test alongside a stopped vehicle on a narrow rural road as well as ATVs and boats and snowmobiles is an important safety tool for both the officers and operators. The Judiciary Committee asks your support for the motion of ought to pass with amendment. Thank you.

SENATOR BARNES: Senator Peterson, how many did you mention that we now have?

SENATOR PETERSON: My notes here say 894.

SENATOR BARNES: My next question is, when is the town of Raymond and the rest of the towns in district 17 going to get those for the local police departments?

SENATOR PETERSON: I am unaware of the timing on the distribution but this bill takes effect as of January 1, 2004 and I believe that there will be a general distribution by that point, Senator.

SENATOR BARNES: Thank you very much.

SENATOR FLANDERS: Thank you Mr. President. To help answer that question Senator Barnes, the state, at the present time is receiving forty. The procedure has to be that the officers have to go to the standard school to learn to run the machines. There are forty over there now and there are forty Fish and Game wardens taking the test, taking the course and these first forty breathalyzers are going to go on the snowmobile trails. We all know that we have more fatalities this year than we have had in any other year. They are happening the same time of day and we need some law enforcement and the rest will come out

and it will go to the State Police. Also in this summer, these can be used on boating enforcement. I think that it is a great tool and this bill certainly should pass. Thank you.

SENATOR BARNES: Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 41-FN**, relative to the installation of airbags by motor vehicle repair facilities. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

**Senate Judiciary**  
**February 13, 2003**  
**2003-0308s**  
**05/10**

### **Amendment to SB 41-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to the installation of airbags.

Amend the bill by replacing all after the enacting clause with the following:

1 New Sections; Installation of Airbags. Amend RSA 358-D by inserting after 11 the following new sections:

358-D:11-a Installation of Airbags; Criminal Penalty for Improper Installation. Any person who knowingly installs or reinstalls any object which is not a properly operating airbag that was designed in accordance with federal safety regulations for the make, model, and year of the vehicle, as part of a vehicle inflatable restraint system, shall be guilty of a class A misdemeanor.

358-D:11-b Sale of Vehicle with Inoperative Airbag; Criminal Penalty. Any person who knowingly sells a vehicle with an inoperative airbag shall be guilty of a class A misdemeanor.

358-D:11-c Installation of Recycled Airbag. Nothing in RSA 358-D:11-a or RSA 358-D:11-b shall prohibit the installation or reinstallation of a recycled airbag that was designed in accordance with federal safety regulations for the make, model, and year of the vehicle, as part of a vehicle inflatable restraint system.

2 New Paragraph; Motor Vehicle Repair Facilities; Remedies Added. Amend RSA 358-D:12 by inserting after paragraph IV the following new paragraph:

V. The remedies provided in this section shall be in addition to any other right, remedy, or penalty provided by law, including RSA 358-D:11-a and RSA 358-D:11-b.

3 Effective Date. This act shall take effect January 1, 2004.

**2003-0308s**

### **AMENDED ANALYSIS**

This bill establishes a criminal penalty for any person who knowingly installs any object which is not a properly operating airbag that was designed in accordance with federal safety regulations for the make, model, and year of the vehicle, as part of a vehicle inflatable restraint system.

This bill also establishes a criminal penalty for any person who knowingly sells a vehicle with an inoperative airbag.

SENATOR CLEGG: Thank you Mr. President. I move SB 41-FN ought to pass with amendment. Senate Bill 41 provides that any person who operates a motor vehicle repair facility and who knowingly installs a sub-standard airbag shall be guilty of a misdemeanor. Instances have occurred where repair shops have knowingly failed to install an airbag and innocent customers have purchased the automobiles thinking that the car was equipped with this important safety feature. Because airbags can be expensive to replace and no penalties were in statute for not replacing them, SB 41 remedies this. Senate Bill 41 as amended also allows for the use of recycled airbags from auto recycling yards.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 93**, relative to wrongful discharge from employment. Judiciary Committee. Inexpedient to legislate, Vote 4-1. Senator Clegg for the committee.

SENATOR CLEGG: Thank you Mr. President. I move that SB 93 inexpedient to legislate. Senate Bill 93 would have made a fundamental policy change from the state of New Hampshire being an employment at-will state, not only would this bill have been a boon for attorneys, as a flood of litigation would have come in from its adoption, but it also would have encouraged employers to terminate any employees prior to their six months probationary period. The Judiciary Committee heard testimony that if this bill were to pass, it cost an employer between \$30,000 to \$50,000 every time anyone was terminated. The Judiciary Committee respectfully requests that you support us on inexpedient to legislate.

SENATOR FOSTER: Thank you Mr. President. I rise in opposition to the committee report. If the recommendation were to fail, I would support the motion to rerefer the bill so that it could be looked at more closely. There are some concerns that I have as it is written, but I think that it is a good start and really deserves some closer review. I think that the bill, with some work, would strike a better balance than currently exists. Frankly, I think that it would ultimately reduce litigation, not expand litigation if it was put together in an appropriate way. The bill, as stated, does replace employment at-will doctrine and puts in place a requirement for good cause dismissal. Employers are concerned with the bill, but frankly, I happen to believe that the employment at-will doctrine at this point, the exceptions to it have really swallowed up the rule in our state and actually pretty much nationally. New Hampshire legislature and congress have put in place a number of exceptions to the employment at-will doctrine, frankly, very good ones. I think that all of which we likely disagree. For example, dismissal on the basis of race, religion, gender, age and national origin are illegal. You can't dismiss someone because they are a whistleblower. The courts have also held, under the so-called "wrongful discharge" doctrine that you can't dismiss an employee solely because that employee violates public policy or to do so would be to violate public policy whatever that might mean under the circumstances. Also, employees, if they are under a union contract, obviously cannot be dismissed at-will, and notably, most executives would

never enter into an employment contract that allowed them to be dismissed at-will. As a result of these problems, most attorneys when they are asked about whether or not, by their client, whether they can dismiss an employee, at will, advise them no, you really ought to have good cause. You have to promptly document the file because the fact of the matter is, when an employee is dismissed without any good reason, normally they fit into one of these protected categories and would go ahead and pursue litigation routes in any event. The point is this is an extremely expensive process as the law currently exists. So on balance, what happens is sophisticated employers, those who have sophisticated HR departments and have legal counsel, do a good job and generally go through progressive discipline before they let somebody go, but the smaller employers don't do so and they are the ones that end up being caught in the litigation trap. This bill would put in place standards that I think everybody would understand. They would understand that they can't dismiss people at will and would know as a matter of law, that they have to go through an appropriate procedure to let folks go and wouldn't get trapped, therefore, in expensive litigation. The bill also has specific provisions that I think also go to limit litigation costs. It would put in place a one-year statute of limitations. Currently there is a three-year statute of limitations for wrongful discharge. It allows arbitration so that an employee and employer that have a disagreement could go to arbitration and they wouldn't have to go to court. That also would save a tremendous amount of money. It also limits the award on damages to economic damages and doesn't allow non-economic damages, which at least one person who testified before our committee, is not clear on the law. It also requires employees to go through any internal appeal process before they go to court. If they don't do so they are barred from going to court. So I think that it puts into place, a lot of protections. It certainly isn't perfect. I think that the definition of "just cause" would have to be expanded. For example, to include "economic basis" for dismissing individuals, but I think that it is a very good start. Therefore, I would ask that you vote down the motion of inexpedient to legislate so that we can put forward a motion to rerefer. Thank you.

SENATOR D'ALLESANDRO: Thank you Mr. President. I just want to speak very briefly because I think that Senator Foster has articulated most of the important issues of the bill. I disagree with my esteemed Senate colleague from Hudson that lawyers are going to be the beneficiaries, because they are not going to be the beneficiaries. Actually the arbitration portion of this piece of legislation would basically eliminate that. I just want to say that this piece of legislation has been around for a long period of time. It was initially introduced in the House of Representatives in 1990. It was reintroduced in 1993. Reintroduced in 1996 and reintroduced in 1999. So there is a need. I believe that there is no question that there is a need. That need has manifested itself over the last decade, and how we address it is, I think, the key issue and maybe this needs more study, but certainly it is an issue that needs to be addressed. Let me say that as a result of not addressing this issue, we have had a series of court cases. It is those court cases that are in place today, that actually set the standard. The first of those court cases was *Cloutier versus The Great Atlantic and Pacific Tea Company* in 1981. A second case on wrongful discharge was *Cilley versus New Hampshire Ball Bearings* in 1986. Further, *Wenners versus Great State Beverages Incorporated* in 1995. There have been other appeals based on these issues. The appeal cases were *Panto versus Moore Business Forms* in 1988

and an appeal by Elaine Fugere in 1991. So the lawyers in essence, have made money because we haven't addressed the issue. So what I want to do Senator Clegg, is to reduce the gold that goes to the pockets of the lawyers and put it in the pockets of the employees who are productive and do a good job, and as a result, New Hampshire does thrive because we have a situation where we do have quality employees and it just seems to me that the level playing field is something that we ought to put in place. Thank you Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**SB 43**, relative to archives and records management. Public Affairs Committee. Ought to pass, Vote 4-0. Senator Morse for the committee.

SENATOR MORSE: Thank you Mr. President. I move that SB 43 ought to pass. Senate Bill 43 changes the name of the Division of Records Management and Archives to the Division of Archives and Records Management and amends the qualifications of the Director of the division. Currently, twenty-seven states have combined archives and records' programs that are named the Division of Archives and Records Management. We foresee no significant problems or costs that will be incurred by the state should we elect to change the name as the division has agreed to finish using all labeled paper goods and office supplies before placing any new orders. In regards to the second part of the bill and to the qualifications of the director, an individual must have either a master's degree in library science or history or ten years of relevant experience to be appointed as director. The committee supported ought to pass 4-0. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 104**, relative to state administration of medicaid benefits and services for individuals who are deaf or hard of hearing. Public Institutions, Health and Human Services Committee. Ought to pass with amendment, Vote 4-0. Senator O'Hearn for the committee.

**Public Institutions, Health and Human Services**

**February 12, 2003**

**2003-0269s**

**01/04**

**Amendment to SB 104**

Amend the bill by replacing section 1 with the following:

1 Statement of Purpose. The general court recognizes that further adjustments to the payment schedule for services for the deaf and hard of hearing may be necessary to fully implement the infant deafness program.

SENATOR O'HEARN: Thank you Mr. President. Senate Bill 104 is one outcome of a study committee to review the status of the Universal Newborn Hearing Screening Program, a program designed to screen infants for deafness and hard of hearing. The state has made great strides. The majority of the hospitals now screen our infants and the remainder will soon be online to screen our infants. The study raised concerns about the adequacy of Medicaid payment rates for audiological and hearing aid services for young children, as well as concerns about delays in the delivery and administration of hearing aid services due to staffing issues. To satisfy these concerns, SB 104 requires the Department of Health and Human Services to analyze the medicaid payment rates. The bill also requires the department to review the authorization process for audiological services which will "ensure that there are no untimely delays" when



the process is put into practice. The committee removed the language mandating that the commissioner make payment adjustments based on the analysis required by SB 104. The committee felt that whatever adjustments are needed should be made through the legislative process and urges the Senate to vote ought to pass with amendment.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 38-FN-A-L**, authorizing special number plates for firefighters and dedicating the revenues for matching grants to purchase firefighting equipment. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Kenney for the committee.

**Senate Transportation**

**February 12, 2003**

**2003-0279s**

**03/04**

**Amendment to SB 38-FN-A-LOCAL**

Amend the title of the bill by replacing it with the following:

**AN ACT** authorizing special number plates for firefighters.

Amend the bill by replacing all after the enacting clause with the following:

1 New Subparagraph; Department of Safety; Rulemaking Authority; Motor Vehicle Registration; Firefighter Number Plates. Amend RSA 21-P:14, III by inserting after subparagraph (ii) the following new subparagraph:

(jj) Application for firefighter number plates, as authorized by RSA 261:91-a.

2 New Section; Certificates of Title and Registration of Vehicles; Firefighter Number Plates. Amend RSA 261 by inserting after section 91 the following new section:

261:91-a Firefighter Number Plates.

I. The director shall design and issue, with the approval of the commissioner, special number plates to be affixed to the personal vehicles of firefighters. Such plates shall be issued only upon application with proof of firefighter status, and upon payment of a one-time \$30 fee to cover production and administrative costs that shall be in addition to the regular motor vehicle registration fee and any other number plate fees otherwise required. Renewals of such special number plates shall be charged the fee assessed for standard motor vehicles as prescribed under RSA 261:141. The application shall be signed by the fire chief to verify that the applicant is a firefighter.

II. For the purposes of this section, a firefighter is a person who has the authority and responsibility to engage in the prevention, control, or extinguishment of fires, and who performs activities that are required for and directly concerned with the prevention, control, or extinguishment of fires, including incidental non-firefighting functions.

III. A firefighter who is issued plates under paragraph I shall return those plates to the division of motor vehicles no later than 10 days after the firefighter leaves his or her position. When the firefighter leaves his or her position, the fire chief shall immediately notify the director.

3 Effective Date. This act shall take effect July 1, 2003.

2003-0279s

## AMENDED ANALYSIS

This bill authorizes special number plates for firefighters.

SENATOR KENNEY: Thank you Mr. President. I move that SB 38 ought to pass with amendment. Senate bill 38 authorizes the creation of special number plates for firefighters. Over the years a number of firefighters and fire departments have requested special plates to recognize firefighters for their hard work and dedication. These plates will be unique to the active firefighters and will further identify to the public, a firefighters vehicle when they are called to a fire. We owe a great gratitude to firefighters and think we should move forward with this special number plate. Thank you Mr. President.

SENATOR BARNES: Senator Kenney, does this bill include volunteer firefighters?

SENATOR KENNEY: The firefighters that would be included in this would be certified as firefighters, so if the volunteers were certified firefighters, they would be eligible for this specialized plate.

SENATOR BARNES: Thank you

**Amendment adopted.**

SENATOR BOYCE: I would just like to rise to point out that I think that this and some of the other plate bills that have come through this legislature in the past and probably will in the future, I believe are running afoul of the constitutional provision that all money derived from motor vehicle use and registration go to the Highway Fund. I would point out that if this passes as it is amended, that it will be taking money back that ought to be going to the Highway Fund and putting it to other uses. I am opposed to it on that basis. Thank you.

**Question is on the adoption of the bill as amended.****Adopted.****Referred to the Finance Committee (Rule #26).**

SB 44, relative to penalties for vehicle dealers. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Flanders for the committee.

**Senate Transportation****February 7, 2003****2003-0213s****03/05****Amendment to SB 44**

Amend the bill by replacing all after the enacting clause with the following:

1 Rulemaking; Suspension of Registrations, Licenses, and Privileges. Amend RSA 21-P:14, III(hh) to read as follows:

(hh) Suspension of registrations, *licenses, and privileges*, as authorized by RSA 261:177 and 261:178.

2 Penalties; Dealers, Utility Dealers, Auto Recycling Dealers, Transporters, and Repairers. Amend RSA 261:177 to read as follows:

261:177 Penalties; Dealers, Utility Dealers, Auto Recycling Dealers, Transporters, and Repairers.

I. Upon any evidence of misuse of registration or any violation of the provisions of this chapter or any rules authorized by law the director may:

(a) Suspend or revoke any dealer's, utility dealer's, automotive recycling dealer's, transporter's, or repairer's registration, **license, or privileges**; or

(b) Impose an administrative fine upon any dealer, utility dealer, automotive recycling dealer, transporter, or repairer. The maximum amounts of the fines which may be assessed shall be as follows:

(1) For the first violation, \$250.

(2) For the second violation, \$500.

(3) For the third violation, \$750.

(4) For the fourth violation, \$1,000.

(5) For 5 or more violations, \$2,000.

(c) No fine, or suspension or revocation of a dealer's, utility dealer's, automotive recycling dealer's, transporter's, or repairer's registration, **license, or privileges** shall take effect unless approved by the commissioner. The commissioner shall have the authority to modify the amount of the fine assessed or the suspension or revocation of registration, **license, or privileges** imposed.

II. Whenever a dealer, utility dealer, automotive recycling dealer, transporter, or repairer has a license or plates or license and plates revoked or suspended for a period of greater than 15 days, a fee of \$50 shall be paid for the restoration of such license or plates or license and plates.

**III. Upon a finding by the director that any dealer, utility dealer, automotive recycling dealer, transporter, or repairer is in violation of an order of the commissioner issued pursuant to this section, the director may impose an administrative fine of up to \$1,000 for each day that the dealer, utility dealer, automotive recycling dealer, transporter, or repairer is in violation of the order.**

**IV. Any dealer, utility dealer, automotive recycling dealer, transporter, or repairer who violates any of the provisions of this chapter or fails to comply with any order of the director pursuant to this chapter shall be guilty of a violation.**

3 Effective Date. This act shall take effect January 1, 2004.

SENATOR FLANDERS: TAPE INAUDIBLE

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 56-FN, relative to parking for persons with disabilities. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Kenney for the committee.

Senate Transportation

February 12, 2003

2003-0297s

03/04

#### Amendment to SB 56-FN

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Motor Vehicles; Words and Phrases Defined; Access Aisle. Amend RSA 259 by inserting after section 1-a the following new section:

259:1-b Access Aisle. "Access aisle" shall mean a designated space for maneuvering a wheelchair or other mobility device when entering or

exiting a vehicle, and that is immediately adjacent to a properly designated parking space for persons with a walking disability, whether on public or private property. Access aisles shall be marked so as to discourage parking in them.

2 Stopping, Standing, or Parking Prohibited in Specified Places; Parking Place Designated for Person With a Walking Disability, Penalty; Access Aisle. Amend RSA 265:69, I(i)-(l) to read as follows:

(i) At any place where official signs prohibit stopping[-];

(j) In any parking place, whether on public or private property, specially designated for a person with a walking disability by means of a sign as required by RSA 265:73-a stating that the space is reserved for a person with a walking disability or displaying the international accessibility symbol, unless that person has ~~a special [number plates, decals, or a card]~~ **plate or placard** issued ~~or recognized~~ pursuant to RSA 261:86[-87 or 88] **or RSA 261:88, [or a similar license plate, decal, or car issued by another state or country displaying the international accessibility symbol] and the person who qualifies for the plate[-decal, or card] **or placard** is being transported to or from the parking place. Notwithstanding the provisions of title LXII or any other provision of law, a person who violates the provisions of this subparagraph shall be fined a minimum of ~~[\$50;-]~~ **\$250;****

(k) On any controlled access highway;

(l) In the area between roadways of a divided highway, including crossovers;

***(m) In or overlapping into any access aisle. Notwithstanding the provisions of title LXII or any other provision of law, a person who violates the provisions of this subparagraph shall be fined a minimum of \$50 for a first offense and a minimum of \$100 for each subsequent offense.***

3 New Section; Enforcement of Parking Prohibition in Parking Spaces and Access Aisles Designated for Persons with a Walking Disability. Amend RSA 265 by inserting after section 69 the following new section:

265:69-a Enforcement of Parking Prohibition in Parking Spaces and Access Aisles Designated for Persons with a Walking Disability. Testimony under oath with clear photographic evidence from a person with a walking disability pursuant to RSA 261:86 or RSA 261:88 or the driver of a vehicle transporting such a person that a vehicle that does not display a special plate or placard issued or recognized pursuant to RSA 261:86 or RSA 261:88 was parked in a designated parking space for persons with a walking disability or any vehicle parked in or overlapping into an access aisle shall be sufficient evidence to prove that the owner of the vehicle has violated RSA 265:69, I(j) or (m), unless such evidence is rebutted or contradicted.

4 Effective Date. This act shall take effect January 1, 2004.

2003-0297s

### AMENDED ANALYSIS

This bill prohibits parking in access aisles serving parking spaces for persons with disabilities. This bill also increases the minimum fine for illegally parking in a parking place specially designated for a person with a walking disability, and inserts a provision regarding evidence in disability parking enforcement proceedings.

SENATOR KENNEY: Thank you Mr. President. I would like to defer, if possible, to my fellow committee member, Senator Below.

SENATOR BELOW: Thank you Mr. President. Senate Bill 56 would prohibit parking in access aisles serving parking spaces for persons with disabilities and change the minimum fine for illegally parking in a space specially designated for a person with a walking disability, which is found in RSA 265:69 to conform with the existing minimal fine for the same offense which is found in RSA 265:74 which is \$250. The committee heard extensive and compelling testimony that we need to close a gap in this statute. The issue, just to acquaint you with it is access aisles, which are the areas adjacent to some handicap parking spaces which are used particularly by people with wheelchairs or other mobility devices for getting in and out of their vehicle. The problem that has occurred is that the statute doesn't specifically prohibit parking in these access aisles so there is a problem with people who may be blocked from using this space because the access aisle is blocked or once they have parked, they return to their vehicle and find that they can't get back into it because somebody has blocked the area that they need to pull out a ramp and get into their van. This has caused some people to spend hours in a hot parking lot waiting for the driver to return or looking for that driver. The committee amendment is found on page 10 of the Calendar. It is a complete substitution of the bill. It defines access aisle. It cleans up the statute with regard to the prohibition on parking in a handicap parking space and it prohibits parking in or overlapping into an access aisle, creating the minimum fine of \$50 for the first offense and \$100 for each subsequent offense. Finally, the bill allows for testimony under oath with photographic evidence to be used in certain circumstances as a basis for imposing a ticket. This bill was supported by representatives of MS Society, the New Hampshire Brain Injury Association, the Governors Commission on Disability and the Department of Safety. I urge your support for the unanimous committee report of ought to pass with amendment. Thank you.

SENATOR BARNES: Senator Below, this has just come to my attention; I didn't realize what those stripes were for. If I have disability plates on my car, does that mean that I can't park in the spot next to those stripes because the fellow that comes in behind me with the van that needs that spot...does that prohibit me with my plates, from parking there, blocking that up?

SENATOR BELOW: No. If you have a disability plate or placard, you can park in a designated space whether it happens to be designated for vans or otherwise, you just can't park in the stripe access aisle, next to such a space.

SENATOR BARNES: But if I pull in and I park there, I have cut that off from you coming in with your wheelchair that you need to come out...you are prohibited, you will not be able to use it. How do we get around that?

SENATOR BELOW: That can be a problem, but in most shopping centers or newly constructed projects, there are design standards for the number of spaces for access aisles and generally if they are not taking off inappropriately, there is generally enough, in most newer construction. The issue of people...there actually has been a problem with disability plates parking in the access aisle, which is limited, that problem.

SENATOR BARNES: I understand that, but I am concerned about you coming in and not being able to use that spot that is there for you because I am sitting there because I got there before you did.

SENATOR BELOW: Well the bill doesn't address that. I am not sure that anyone has created two categories of disability parking at this point.

SENATOR BARNES: So this bill doesn't necessarily take care of that person in the van who gets blocked out from using that disability spot?

SENATOR BELOW: That is correct.

SENATOR BARNES: Thank you.

SENATOR BOYCE: I would just like to speak. This is my bill. This bill was brought in by me at the request of the MS Society and the Commission on Disability. The request to do this bill came to me just a few days after my wife and I had experienced someone doing this. We had been out to a movie and there were two spaces with the access aisle between. We parked her van with the handicap placard in one of them and there was another van parked in the other space. I don't know if that one needed the ramp or not, but when we came back out from the movie, there was a jeep parked between the two vehicles. If the other vehicle had needed to have that ramp, there was no way that they could have gotten into it. Currently, there is nothing that the police department in that town could do about that because there was no penalty for parking in that access aisle. So this bill clears up that loophole that there is currently no penalty and it also toughens the penalty so that the penalty matches the misuse of spaces on the street or in a municipal parking garage. The current statute gives the \$250 fine for those offenses. If it is a municipal parking garage or on the street and you misuse the handicap space, it is a \$250 fine. Currently, if you do it on private property...if you go to WalMart and do the same thing, it is only a \$50. Because of that \$50 fine, the police departments were not terribly willing to go and try to enforce that, but with a \$250 fine, Assistant Commission Stephen told us that he felt that the police departments would be willing to better protect the access to these spaces. With this new provision that there is a fine for parking in the access aisle, we are taking care of that as well. I definitely encourage this to pass. Thank you.

SENATOR BARNES: Senator Boyce, is the legislation in for all new construction to have these spaces? This is all brand new to me, that is why I am asking you these questions. I owned a business that we had to have, I think, two or three handicap stalls and we had to have signs six foot into the air, which was in the law, but these stripes, are they in, if I went to build my McDonald's tomorrow, when I went to the planning board in Raymond or wherever, would it be in there that I would have to have those stripes in there for that disability?

SENATOR BOYCE: I believe that as a result of passage of the ADA a number of years ago, the federal ADA legislation does include standards that require certain standards for new construction, yes.

SENATOR BARNES: Would you believe that I don't think any existing businesses have got these stripes in their lots?

SENATOR BOYCE: I understand and there are a lot that don't even have a sign, they rely on a painted symbol on the ground.

SENATOR BARNES: That doesn't help very much in this kind of weather does it?

SENATOR BOYCE: It does not at all, especially if the business doesn't bother to plow the parking space, which also happens. There are problems with this. This deals with one of the problems.

SENATOR BARNES: Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 137-A**, requiring the state to construct a non-toll bridge connecting the towns of Merrimack and Litchfield and making an appropriation therefor. Transportation Committee. Inexpedient to legislate, Vote 4-1. Senator Kenney for the committee.

**SENATOR KENNEY:** Thank you Mr. President. Senate Bill 137 would require the state to construct and make appropriations for a non-toll bridge connecting the towns of Merrimack and Litchfield. While we all understand the unquestionable need for another way to cross the Merrimack River, the Department of Transportation's Circumferential Highway Project already includes a plan for a new bridge to be built at this crossing. Senate Bill 137 would further increase the bonded indebtedness of the highway fund and interfere with the ten-year highway plan already in progress. The committee recommends that we stay on the course with the Circumferential Highway Plan. I understand the good intentions of the prime sponsor; unfortunately, we have to, as the Transportation Committee, we have to look at DOT and try to abide by the Ten-Year Highway Plan and to stay within that structure. So I would move that SB 137 be inexpedient to legislate. Thank you.

**SENATOR MARTEL:** Thank you Mr. President. I rise as the only member on the dissenting side of this vote. I thank you for the opportunity to speak on behalf of my constituents from the town of Litchfield. It is a small town south of Manchester, north of Hudson, which is very valued for its fertile farmland. Litchfield has a serious problem with not having a direct linkage to route 3, the Everett Turnpike, less than ten miles away from its town line. This bridge would be keyed an important connector and would remove thousands of cars that travel each day on the roads between Hudson and Manchester, which is currently the only access in or out of this town. This is why I stand up and strongly defend the citizens of Litchfield who have been negatively impacted by this for many years. I thank you for your time.

**Committee report of inexpedient to legislate is adopted.**

Senator Martel is in opposition to the motion of inexpedient to legislate on SB 137-A.

**SB 57-FN**, relative to certain accounts within the fish and game fund. Wildlife and Recreation Committee. Ought to pass, Vote 4-0. Senator Cohen for the committee.

**SENATOR COHEN:** Thank you Mr. President. Senate Bill 57 clarifies the use of certain Fish and Game fund accounts for fundraising expenses and repeals the Raptor Conservation account and Wildlife Protection Fund. All money from the repealed funds and falconry permit fees will be deposited into the nongame species account. By combining these funds into one account, the agency will have the latitude to use unrestricted Fish and Game revenues and dedicated falconry license revenues to meet matching provisions of federal grants. Senate Bill 57 was created at the request of the Department of Fish and Game and has the support of the New Hampshire Wildlife Federation and its 7,300 members. The Wildlife Committee voted 4-0, therefore, I move SB 57 ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills ordered to third reading be by this resolution read a third time and all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

**LATE SESSION****Third Reading and Final Passage**

**SB 22**, amending the duties of the public higher education study committee.

**SB 39**, relative to the results of a preliminary breath test as evidence in court.

**SB 41-FN**, relative to the installation of airbags.

**SB 43**, relative to archives and records management.

**SB 44**, relative to penalties for vehicle dealers.

**SB 51-FN**, relative to membership on the New England Board of Higher Education.

**SB 53**, establishing an advisory board to the labor commissioner and relative to the terms of the members of the compensation appeals board.

**SB 56-FN**, relative to parking for persons with disabilities.

**SB 57-FN**, relative to certain accounts within the fish and game fund.

**SB 104**, relative to state administration of medicaid benefits and services for individuals who are deaf or hard of hearing.

**SB 172-FN**, increasing certain fees charged by the secretary of state.

**HCR 16**, urging increased diplomacy to achieve a just, peaceful, and rapid resolution of the conflict between India and Pakistan relative to the state of Jammu and Kashmir.

**ANNOUNCEMENTS**

Senator Sapareto (RULE #44): Mr. President and members of the Senate, I had the opportunity to visit the summit of Mount Washington on Monday. I can tell you that there are two buildings there that are completely devastated. All of the generators are completely gone. There was still no phone service at that time. I assume that very shortly we will be seeing something coming in from DRED regarding what is necessary to replace the buildings and or power cables. They really have a good argument for a need for a permanent power line up there. It is a very serious safety issue. I just wanted the Senate to be aware of how hard they are working up there in trying to replace the facilities.

**RESOLUTION**

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, receiving House Messages, and receiving Enrolled Bill Reports and Amendments, and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

**In recess to the Call of the Chair.**



**Out of Recess.****INTRODUCTION OF SENATE BILLS**

Senator Clegg moved that in accordance with the list in the possession of the Senate Clerk, Senate Bills numbered **228 - CACR 14** inclusive shall be by this resolution read a first and second time by the therein listed titles.

**Adopted.****First and Second Reading and Referral**

03-1206

**SB 228**, relative to the preservation of historic barns and similar historic agricultural structures by municipalities. (Johnson, Dist 2; Kenney, Dist 3; Clegg, Dist 14; Larsen, Dist 15; DeJoie, Merr 39; Alger, Graf 14; Scamman, Rock 83; Babson, Carr 6; E. Blanchard, Merr 38: Public Affairs)

03-0396

**SB 229**, making reference changes to the school building aid statutes. (O'Hearn, Dist 12; S. L'Heureux, Merr 37: Education)

03-1177

**SB 230**, relative to transition service and relative to the sale of PSNH generation assets. (Below, Dist 5; Gatsas, Dist 16; Odell, Dist 8; D'Allesandro, Dist 20; Cohen, Dist 24; Norelli, Rock 86; Maxwell, Merr 35; Pitts, Rock 86; Kaen, Straf 72: Energy and Economic Development)

03-1192

**SCR 3**, urging maintenance of funding for the Low Income Home Energy Assistance Program. (Below, Dist 5; Odell, Dist 8; Green, Dist 6; Peterson, Dist 11: Energy and Economic Development)

03-1195

**SCR 4** urging the New Hampshire congressional delegation to take appropriate action against modification of the Clean Air Act if the result jeopardizes New Hampshire's ability to safeguard public health and protect environmental quality. (Below, Dist 5: Environment)

03-1108

**CACR 14**, Relating to: the funding of public education. Providing that: the state shall fund an amount not less than 30 percent of the total average statewide expenditure for public education for kindergarten through grade 12 during the previous biennium and that the general court shall have the power to apportion this amount by statute; that the state shall assure the opportunity for an adequate public education for all pupils in the state in grades kindergarten through 12; and that no tax in any form on the value of real property shall be used to fund the state's obligation to cherish and support public education. (Peterson, Dist 11; J. Pratt, Ches 24: Education)

**HOUSE MESSAGE**

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 104-FN**, implementing procedures for a hospital or safe haven to assume temporary care and control of an abandoned child and creating an exception to the crime of endangering the welfare of a child.

**HB 128**, relative to the treatment of horses.

**HB 361-L**, permitting municipalities to form regional water districts.  
**HCR 1**, endorsing the Canine Good Citizen Program.

### INTRODUCTION OF HOUSE BILLS

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **104 - HCR 1** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 104-FN**, implementing procedures for a hospital or safe haven to assume temporary care and control of an abandoned child and creating an exception to the crime of endangering the welfare of a child. (Public Institutions, Health and Human Services)

**HB 128**, relative to the treatment of horses. (Wildlife and Recreation)

**HB 361-L**, permitting municipalities to form regional water districts. (Environment)

**HCR 1**, endorsing the Canine Good Citizen Program. (Wildlife and Recreation)

### LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*March 6, 2003*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

As you know, it was two hundred years ago that Lewis and Clark and their little band made that incredible journey from Missouri all the way across plain, mountain, desert and forest to the mouth of the Columbia River where it flows into the Pacific Ocean. Since you and I were last together here two weeks ago, I have been out to Washington state, right along the Columbia River gorge, just a few score miles from the ending destination of Lewis and Clark's great adventure. Flying back home from there and looking down from 35,000 feet, on the amazingly tortuous and endless route that they had to travel to reach their goal, I thought about you and your task and I thought about the work that I am called to. I wonder, if in two hundred years, what you and I are doing now will affect how things will be then. Because if so, then whatever challenges our journey demands of us will be well worth the effort. Remember that you have been elected to be adventurers and explorers, and in many ways, pioneers for us and for the people not here just yet. A bit scary, but what a trip.

Let us pray:

*Gracious God, we ask You to be the Sacagawea of our journey, guiding and encouraging us toward the destination of your desire. As that*

*lowly but wise young woman led her charges to the very edge of our continent, may You take each of us right up to the very edge of our opportunity and our duty, starting from where we stand right now. Amen.*

Senator Flanders led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS COMMITTEE REPORTS

**SB 121-FN**, relative to mortgage originator registration. Banks Committee. Ought to pass, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you Mister President. I move SB 121 ought to pass. Currently there is no legislation that requires mortgage originators to register. As a result individuals who are less than trustworthy are giving the industry a bad reputation and are engaging in bad practices with consumers. In some instances mortgagee companies have unknowingly hired felons. This bill establishes a process for mortgage originators to register with the commissioner of the Banking Department and seeks to raise the standards in the mortgage industry. In this legislation, employers can suspend or deny employees who are already employed by other mortgage companies or have criminal backgrounds. This provides protection for the mortgage industry, Banking Department as well as, at the top of the list, the consumers. The Banks Committee asks your support for the motion of ought to pass. It passed out of committee 5-0.

SENATOR LARSEN: I just rise to applaud the Banks Committee and those in the industry who over the past year, at some early...last year I brought a bill in to ask for this kind of licensing and registration. They studied the issue and came to a compromise agreement. This is a victory, I think, for New Hampshire's consumers, many of whom this is their biggest purchase they make in their lifetime. It brings some important consumer protections along. So I applaud the Banks Committee and those in the industry for finding a way to make this happen.

**Adopted.**

**Ordered to third reading.**

**SB 164**, relative to the unauthorized use of a financial institution's name. Banks Committee. Ought to pass with amendment, Vote 4-0. Senator Flanders for the committee.

**Banks**

**February 19, 2003**

**2003-0362s**

**06/09**

### Amendment to SB 164

Amend RSA 384:67 as inserted by section 2 of the bill by replacing it with the following:

384:67 Unauthorized Use. No individual or business entity shall make use of the name or trademark of any bank, as defined in RSA 384-B:1, I, national bank, federally chartered savings bank or association, federally or state chartered credit union, any mortgage lender as defined in RSA 397-A and 397-B, or any affiliate or subsidiary thereof, in any written or oral advertisement or solicitation without the prior written consent of the institution. The bank commissioner, in accordance with RSA 384:12-a, may issue a cease and desist order against any individual or business entity which violates this section.

Amend RSA 384:69 as inserted by section 2 of the bill by replacing it with the following:

384:69 Private Action; Award of Costs and Attorneys' Fees. Any bank, credit union, or mortgage lender injured by the unauthorized use of its name or trademark may pursue an action in the superior court, and if it prevails, it shall be awarded its costs and attorneys' fees in addition to any damages.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. I move SB 164 ought to pass as amended. This is a correction bill to help the consumers as well as the banking industry. What is happening is that if a person goes to get a loan, and I have examples here, they happen to be Sunapee Bank. Other people from out-of-state go to the register of deeds and they gather information on the person, including the amount of the mortgage and all that type of information. Then they send out solicitations with lender, Lake Sunapee Bank on it. Lake Sunapee Bank has no knowledge of this and did not give authorization for it, but the people receiving it, this happens to be a letter that was sent to someone in Hillsborough, New Hampshire and it has Lake Sunapee Bank as a lender, the amount of the loan, asking information about the debt penalty is the same amount, and the bank has nothing to do with it. This is proper. This is proper for them to do. All that we are asking in this bill is that they cannot use the bank's name. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

Senator Foster (Rule #42) on SB 164.

**Ordered to third reading.**

**SB 61**, relative to collective bargaining units at charter schools. Education Committee. Rerefer to committee. Vote 4-0. Senator O'Hearn for the committee.

SENATOR O'HEARN: Thank you Mr. President. I move SB 61 be rereferred to committee. The committee would like ample time to work on an amendment with the NEA of New Hampshire and also to determine whether or not this legislation is best served as being included to the definition of a "conversion charter school". A rereferral allows for in-depth study to ensure that the best legislation is put forth that is also in the best interest of our teachers who wish to start a local charter school and continue with the local teachers' union. The Education Committee asks your support for the motion of rereferred to committee. Thank you.

**The committee report of rerefer is adopted.**

**SB 68**, authorizing electronic certification of educational credentials. Education Committee. Ought to pass with amendment, Vote 4-0. Senator O'Hearn for the committee.

**Senate Education**

**February 21, 2003**

**2003-0393s**

**04/03**

### **Amendment to SB 68**

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 Teacher Signature Certification. RSA 189:14-g is repealed and reenacted to read as follows:

189:14-g Teacher Signature Certification.

I. A teacher applying for certification through the bureau of credentialing, department of education, shall complete and submit either a written application or an electronic application, both of which shall include a declaration and verification statement to read substantially as follows:

"I hereby certify that I am the individual listed in this application, and that all information provided herein, including all accompanying documentation, is true, accurate, and complete to the best of my knowledge."

II. Any willful misrepresentation or omission of facts shall constitute just cause for denial of certification or revocation of existing certifications, and possible criminal prosecution.

**2003-0393s**

#### AMENDED ANALYSIS

This bill permits a teacher applying for certification to submit either a written or electronic application and authorizes the state board of education to adopt rules relative to procedures for the electronic certification of educational credentialing.

SENATOR O'HEARN: Thank you Mr. President. I move SB 68 ought to pass with amendment. In an effort to upgrade, the Bureau of Credentialing, within the Department of Education, they are making the process of credentialing much simpler. Currently teachers are able to apply, renew credentials, and recommend renewals by superintendents online. This legislation allows signatures to be submitted electronically. This would avoid submitting paper forms and eliminate the cost of having signatures notarized, as is currently required. The amendment keeps in law penalties of willful misrepresentation or omission of facts. In keeping with the spirit of technology, the Education Committee asks your support for ought to pass with amendment. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

#### MOTION TO REMOVE FROM THE TABLE

Senator Flanders move to have **SB 77**, relative to bond votes in school districts with official ballot voting procedures, taken off the table.

**Adopted.**

**SB 77**, relative to bond votes in school districts with official ballot voting procedures. Internal Affairs Committee. Ought to pass.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. This is a bill that I was asked to put in for Kearsarge School District and the Londonderry School District. Both of these towns are charter towns. They have also voted in the provisions of SB 2. Senate Bill 2 now has gone through the courts and all that the courts have said is that the three-fifths decision of SB 2 is indeed correct. These two school districts went through the provisions of SB 2, although they have voted it, they cannot do it unless we change the provisions of the RSA to

three-fifths. All that this bill does is concern two towns, Kearsarge and Londonderry. I ask for your support on this bill to make all of the SB 2 town's equal. Thank you very much.

SENATOR BELOW: Thank you Mr. President. I just want to say that I rise in support of the proposed amendment.

Senator Gatsas offered a floor amendment.

Sen. Gatsas, Dist. 16

**February 25, 2003**

**2003-0408s**

**10/04**

### **Amendment to SB 77**

Amend the title of the bill by replacing it with the following:

AN ACT relative to bond votes in school districts with official ballot voting procedures, and relative to adoption of revisions and the budget process in city charters.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 4:

2 Adoption of Charter Revisions. Amend RSA 49-B:4, VI to read as follows:

VI. Upon the filing of the final report, the municipal officers shall order, ***as determined by the charter commission***, the proposed new charter or charter revision to be submitted to the voters at the next ~~regular~~ ***primary, general, or special*** municipal election or, in the case of municipalities with biennial elections, at the next regular state biennial election held at least 45 days after the filing of the final report.

3 Budget Process. Amend RSA 49-C:23, I to read as follows:

I. A budget submission date and a date by which an annual budget shall be finally adopted by the elected body. Failing final adoption by the established date, the budget ***shall be determined as provided in the city charter, or*** as originally submitted by the chief administrative officer ~~[shall become the budget]~~ ***if no such provision is made in the city charter.***

**2003-0408s**

### **AMENDED ANALYSIS**

This bill includes official ballot statutes for school districts in the defined official voting procedures for the issuance of bonds and notes.

This bill also clarifies the process for voting on city charter revisions and permits a city charter to provide for a default city budget.

SENATOR GATSAS: Thank you Mr. President. The amendment has to do with being able to make sure that the charter...the city of Manchester right now is in the process of doing...the current legislation says that the charter revision to be submitted to the voters at the next regular municipal election. What this does is allow...there is some controversy whether the next regular election means the next general election or the next primary? So the clarification in there says the next primary, general or special municipal election. Then also it allows for submission dates for the elected body to adopt a budget if there is nothing in the charter that talks about adoption of the budget, it reverts back to the chief administrative officer if no such provision is made in the city of charter. Thank you Mr. President.

SENATOR LARSEN: Senator Gatsas, by including...I understand your interest and this amendment would appear to save voters the difficulty of having to pay for additional elections, but by including special municipal elections, are you not actually making it so that a charter change could occur with a special election for a minor elected official, even in such a way that you wouldn't have good voter turnout? That in fact, the charter changes would be considered by a very small voter turnout and could in fact, not have the review that full primary or general election would, by the fact that that tends to turn out more voters? I am just concerned by the inclusion of the words "special election".

SENATOR GATSAS: I think what that allows is if it is not during the course of when a regular or general election would appear, that it allows for them to call for a special election as determined by the Charter Commission.

SENATOR LARSEN: And you feel comfortable the way that this is drafted that that is the way that it will be interpreted?

SENATOR GATSAS: I feel comfortable with that.

SENATOR LARSEN: I will wait to hear some more discussion. Thanks.

SENATOR D'ALLESANDRO: Thank you Mr. President. Being from Manchester, I appreciate Senator Gatsas bringing this forward. I, too, have just a bit of a concern. I support the amendment, but have a bit of concern about the term "special". We just had a special election in Manchester on Tuesday. Only 10 percent of the registered voters in the area turned out for that election. It appears to me from Senator Gatsas' amendment, what he is looking for is the primary or the municipal election as the key words in his proposal, and that the term "special", which is the third on the list, indicates that that may be the third alternative, if indeed, an alternative is necessary. But I wonder if the special part of this or the word "special" needs to be included there where we have primaries, we have the general election in the municipal election process, and we also have the default legislation which would occur as a result of those elections, whether the special election really is the place to do something like this. I think that it is a question that at this point, remains unanswered, but it is an important question given the fact that in special elections, you not only have a minority turnout, but you have a significant minority as attested to by the special election in Manchester on Tuesday, where only 10 percent of the registered voters turned out to vote.

#### **Floor amendment adopted.**

SENATOR BOYCE: I rise to oppose the underlying bill. I just think that it is wrong for the legislature to be changing the effect of the charter change that was made in these two towns in their school district elections. When they adopted the change to their charter, to go to the SB 2 format of voting, the understanding that the voters had at the time that they adopted that, was that bonds would be requiring a two-thirds vote. By making this change, in this bill today, it will change what the people in those towns had voted for after they had voted. The fact that it takes a two-thirds change of the voting membership in those towns to adopt the change that they have already made and it would also take two-thirds or maybe three-fifths, it is super majority, to change what they had adopted before. We are making a change after the fact. We are passing legislation ex post facto as far as I am concerned. This is wrong. It was wrong when we did it to the towns who adopted SB 2 under the

original format, which required a two-thirds vote. The people in the towns that voted to adopt the SB 2 style of voting, all, in my understanding, they all understood that doing so would require a two-thirds vote to adopt bonds in those towns and school districts. That includes these two towns. When the state legislature decided a couple of years ago to make a change to the SB 2 voting, to make it only three-fifths instead of two-thirds we did a wrong to the voters in all of those towns that had adopted this format of voting. I understand that it has been to the courts and the courts have upheld what the legislature did, that does not make what the legislature did right. It does not make this bill right. This is wrong. I think that the people in the towns that adopted a charter change to go to the SB 2 style voting, whether it is these towns or all of the other towns and school districts in the state, they should have, and these should be, required to readopt, under the original format, the voting of SB 2 in order for this to take place. We should have done that two years ago when we adopted the change to all of the SB 2 towns. We should make that change now. This bill should not be effective until the people in those towns go and vote in a super majority, saying that they still wish to adopt the SB 2 style of voting, understanding that it will only take three-fifths to pass a bond issue. We are making changes to what the people have already voted for, after they did it. I am not sure that all of those towns that adopted SB 2 would have done so had they known that the bond issues would be only three-fifths instead of two-thirds. I thank you.

SENATOR BELOW: Thank you Mr. President. I would like to rise still in support of the underlying bill. I would like to simply point out that when the voters in the Kearsarge Regional District voted to go to...to change their charter to go to an official ballot way of voting on school budgets, they voted to change from voting at school district meetings to voting by a ballot over the course of the day. At that time, it was two-thirds for bond approval. At school district meeting it was two-thirds by official ballot. What they voted for was to adopt the procedure to vote by ballot. State law prescribed the majority that was necessary to approve a bond issue. The local voters had no choice in that matter. If we do not adopt this, they have no choice in the matter. They have to simply follow the state law. They amended their charter to follow the state law for official ballot procedures. The legislature sets the majority that is required to approve bond issues. We have changed the majority that is required throughout the state, for all communities that have adopted official ballot voting when they adopted it through the SB 2 procedures. All that we are asking is that Kearsarge district be treated in the same manner even though they adopted official ballot, by a different means by amending their charter and Londonderry as well. That has been the expression of the communities that they wanted to be treated the same way that other communities that have official ballot are and I think that we ought to pass this. Thank you Mr. President.

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 76**, relative to the process for nonrenewal of teacher contracts. Education Committee. Ought to pass, Vote 3-1. Senator O'Hearn for the committee.

SENATOR O'HEARN: Thank you Mr. President. I move SB 76 ought to pass. This legislation is the result of a Tenure Reform Task Force formed



by the previous governor. Members of that task force included: Two superintendents, two principals, two teachers, two school board members, the Chairman of the State Board of Education, one House member, one Senate member, one member of the Department of Education and one of the Governor's staff. As testified, the present system of nonrenewal of teachers is fundamentally flawed, exceptionally complex, and extremely costly both in terms of human and financial resources. This requires that the local school board act as the primary decisionmaker in the hiring and renewal of certified school district employees. The process for appeal is clear; first to the local school board, and to the New Hampshire State Board of Education second. At the school board level procedures for teacher nonrenewal as outlined in administrative rules will be followed. The appeal to the New Hampshire State Board of Education provides an opportunity to review the local school board district's findings of fact to be sure that the local school board's decision is clearly not erroneous. The tenure reform legislation has been around since 1995. It is time to move forward with streamlining the renewal process of teachers. The Education Committee asks your support for the motion of ought to pass. Thank you.

SENATOR FOSTER: Thank you Mr. President. I rise in opposition to the committee report of ought to pass. Let me open my remarks by saying that obviously nobody here wants teachers who are not competent in the classroom. I think that where we differ is how to make a decision to nonrenew them. I think that probably all of us want that decision to be made fairly, I just don't think that this bill does that. I have two primary concerns with the piece of legislation. I don't think that there is adequate due process in it and I also think that it violates the equal protection clause of our constitution. My due process problem, well it really is focused on the proof that has to go into the nonrenewal and the review that is done. What has to happen? Well what has to happen is that the teacher has to be notified that their performance is unsatisfactory, be given notice, an opportunity to reverse that unsatisfactory performance, and if that unsatisfactory performance is not corrected, they can be nonrenewed. Now the bill is written in a way that as I read it, the local school board, when it reviews that decision, doesn't even have to get into whether or not the performance was unsatisfactory. All that they have to do is to find out if there was a notice of unsatisfactory performance. If the notice was given, if a chance was given to reverse that unsatisfactory performance and it didn't occur, well the nonrenewal is upheld. They don't get into what the nonperformance was. So there is no real standard of what is unsatisfactory performance. Worst still, what happens after that? Well, after this bill, if it were to become law, the only right of appeal that they have is to the State School Board. The State School Board can only reverse if the decision by the local school board was "clearly erroneous". Now I don't know what "clearly erroneous" means. I looked into the RSA's and I only found two places where it appeared. It appears in certain labor appeals, but the reversal for "clearly erroneous" is done on the record, the complete record, but a judge who is operating under those statutes also has a number of other opportunities to reverse a decision; in addition to reversing for "clearly erroneous" they can reverse it if it is in violation of the constitutional or statutory provision. If the decision was made in excess of statutory authority, if it is made of unlawful procedures or if there is some other error of law that was corrected. The State School Board can't do that. The only thing that they can do is to look at the record, whatever that

record happens to be, and there is no real standard of what that record happens to be, and decide whether the decision was "clearly erroneous" whatever that means. Now it is something more than preponderance of the evidence, I am not sure it is something quite as high as beyond a reasonable doubt, but it is darn close to beyond a reasonable doubt. So there really isn't, to my mind, any adequate remedy that a teacher has if the decision below is made, was improper, incorrect or unjust. My second problem with it is: The second part of the bill which is if this law is passed, would allow...in fact what the state would be doing is taking its arm out, going in and collecting the bargaining agreements and ripping out a clause out of those collective bargaining agreements that were negotiated between the local school board and the local teachers union. Before I get into the equal protection piece of it, I find it kind of ironic, I mean presumably what we are saying here by this sort of accelerator right of appeal to the State Board is that we want to defer to local officials in making its decision whether or not to renew a teacher, but at the same time, in the very same piece of legislation, we are saying that we don't trust the local school boards who went ahead and negotiated these contracts some time ago, and we are going to change the rules midstream and go in there and rip this clause out of the contract. By the way, provision in those contracts that were negotiated in good faith between two parties and I strongly suspect, were written into those contracts with the teachers union giving away certain other benefits. That is how contracts are negotiated. Two sides give and take. There they are in the contracts and we want to go in and rip it out. But my real question on this is this: Why are we singling out teachers? Now I would oppose doing this in other public employee's contracts, but we are not doing that today. Police and firefighters in many communities also have these provisions in their contracts. I don't think that any of you could sit here and tell me that a policeman or a firefighter whose performance is of question can't do more damage in a community than a teacher whose performance might not be quite up to par. So why are we drawing two separate circles and saying police and firefighters over here, you can have this provision, but teachers, you can't. Why are we doing that? Well might it be that 75 percent of teachers are women and most police and firefighters are men? Is that why we are drawing those two circles? Is that why it is different? I suggest to you that that raise a serious constitutional problem. It raises suspect classifications and as we heard in our committee, it raises a challenge for equal protection that this statute violates the law. Thank you Mr. President.

SENATOR BARNES: Senator Foster, in the last two or three years, how many teachers, through this process, have been disposed of? These incompetent teachers, how many have been taken out of the system with the system that we have in place now?

SENATOR FOSTER: I wouldn't know. We didn't receive...that I heard any testimony on that during the process.

SENATOR BARNES: Wouldn't you think that would be kind of important to know? This bill is obviously there to take care of a situation. I think that it would be kind of interesting to know exactly how many teachers throughout this state, over the last few years, have been removed for being incompetent in a classroom?

SENATOR FOSTER: I think what we would actually have to know is how many times the local school boards tried to do it and were held up in trying to do it, not the total number. I think that what this is appar-

ently intended to do is to streamline the process. If the process was started and stopped prematurely, that would be relevant, but I don't think that we know that.

SENATOR BARNES: I guess this is a would you believe? I don't think that it has anything to do with male or female.

SENATOR FOSTER: I believe that you believe that.

SENATOR LARSEN: Thank you Mr. President and members of the Senate. I rise to oppose SB 76. We have been in this discussion for a great many years. Somehow we have arrived at an era when we are focusing on tearing down our public school system and demeaning the whole-hearted efforts of most teachers to do a good job in our schools. We all agree that the appeal process for the nonrenewal of a teacher should be fair, timely and not excessively expensive. But the question is, what is the best way **TAPE CHANGE** timely and cost-effective appeal process? No one has ever been in favor of keeping a bad teacher or an ineffective teacher in our public schools. Ninety-five percent of all nonrenewal cases are not litigated at all. I mean, it is interesting to listen to the facts. We heard the facts, some of them presented to us in the Senate Education Committee. Ninety-five percent of nonrenewal cases are not litigated. Some years there have been appeals of nonrenewal. In others there have been...I am sorry, in some years, there have been no appeals of nonrenewal and in other years there have only been one or two. Keep in mind that there are 12,000 teachers in this state. Senate Bill 76 would undermined the local control of school boards and increase, not decrease, litigation and legal expense. Senate Bill 76 takes away local control and voids the right to continue to use collectively bargained procedures that exist in about 50 percent of contracts. Senate Bill 76 singles out teachers for different and worse treatment than any other public sector employee. We are currently in a teacher shortage. Why are we doing this? Why are we singling out teachers for different treatment than other public employees? Why are we attacking the profession, which many of us grew up respecting? The contract that they have out, that some of those school districts have gotten as I said, fifty percent of them have negotiated those contracts, allowing them to arbitrate nonrenewal. When they bargained for those things, they gave up other things. They gave up other things like pay increases, holidays, dental insurance, other benefits. The legislature has, by statute, given protection to police, county, state and other public employees from being terminated arbitrarily. They have meaningful appeal processes. This bill would terminate the teacher's constitutional right to equal protection under the law. Teachers would be treated differently than other public employees. This bill will not stop teachers from contesting nonrenewal. It only shifts the venue where advised. It shifts the venue to perhaps more expensive places. Places that take longer. The courts, Federal Equal Employment Opportunities Commission or the New Hampshire Commission for Human Rights. These are more expensive sights to litigate than the system that we currently have. Fifty-percent of New Hampshire's teachers are age fifty and over. Seventy-five percent of New Hampshire's teachers are women. No school district has arbitration over nonrenewal unless it is agreed to it. We are entering into contracted agreements. We are entering into a questionable constitutional area where we are changing contracted agreements between parties. It raises serious equal protection issues. It raises serious constitutional questions. So I rise to also offer a floor amendment. I will keep talking while you pass it out.

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist 15

**March 4, 2003**

**2003-0495s**

**04/03**

### **Floor Amendment to SB 76**

Amend RSA 189:14-b, I as inserted by section 4 of the bill by replacing it with the following:

***I. A teacher aggrieved by such decision may request the state board of education for review thereof. Such request must be in writing and filed with the state board within 10 days after the issuance of the decision to be reviewed. Upon receipt of such request, the state board shall notify the school board of the request for review, and shall forthwith proceed to a consideration of the matter. Such consideration shall include a hearing if either party shall request it. The state board shall issue its decision within ~~[15]~~ 30 days after the request for review is filed, and the decision of the state board shall be final and binding upon both parties. A request for review under this section shall constitute the exclusive remedy available to a teacher on the issue of the nonrenewable of such teacher's contract, provided that a teacher who is covered by a collective bargaining agreement negotiated under RSA 273-A which provides for review upon nonrenewal may invoke such collective bargaining agreement provisions as his or her exclusive remedy.***

Amend the bill by deleting section 5 and renumbering the original section 6 to read as 5.

SENATOR LARSEN: I understand that this legislature has for a number of years, been focused on getting teachers. Getting teachers, changing the negotiated arbitration rights of teacher contracts in fifty percent of the schools. So if the legislature, if this Senate feels that we must act, which I suspect we are going to proceed ahead, despite our best arguments. If we feel that we must act, there is another way to do it and that is the amendment being passed out to you today. That amendment would amend SB 76 to require a nonrenewed teacher to elect between a state board appeal or an arbitration if that is currently available in his or her contract. The amendment, the floor amendment today provides a solution which I believe is very workable and modeled on county personnel statute RSA 28:10-a which gives county employees a year or more of service. I am sorry, county employees with a year or more of service are currently given an appeal to the county...an appeal to the County Personnel Committee unless the employee has a union contract appeal, in which case the employee must use that route, but not both. This amendment would protect local control. It would not void the collective bargaining agreement rights of those who have negotiated for arbitration through fair negotiation processes. This amendment would solve the concerns for two bites of the apple by making a teacher choose between State Board Appeal or Arbitration. It solves a serious due process and equal protection issue that we have raised today. This amendment would reduce litigation. This amendment was offered to us in the Senate Education Committee. It is an opportunity to solve this in a way that many people would agree is fair. I ask you to consider this today and vote for the floor amendment. Thank you very much.

SENATOR CLEGG: Thank you Mr. President. I rise in opposition to the floor amendment. I believe that I heard my colleague say that it was offered to the Education Committee and the Education Committee said no. I don't know whether that is the case or not, but what this does is exactly the opposite of what we are looking for. Mr. President, from parliamentary standpoint, am I allowed to speak beyond the amendment or just to the amendment?

SENATOR EATON (In the Chair): To the amendment.

SENATOR CLEGG: I would urge my colleagues to vote no on the amendment so that we can get back to the main bill.

SENATOR GREEN: I rise in opposition to the proposed amendment. The reason that I do that is I am not sure anywhere in state law where for the first time we would be putting the words "binding arbitration" in a piece of legislation. That is not something that the legislature has ever done, it has been done through negotiations of contracts as a process not as an option under the law. If you do this, you are going to open the door to this form of continuation of this deciding whether or not something is going to be approved or not. I stand here because I oppose strongly, any efforts by anybody in the legislature to include binding arbitration as part of any process. Binding arbitration, in my opinion, does something that we are not intending to do. It takes it out of the hands of the elected officials who are elected by the people to decide on contracts. When you turn it over to binding arbitration, what you are doing is you are having management and employee deciding on an arbitrator. What they do is they try to...from a list of arbitrators, they try to figure out which one is pro-management and which one is pro-employee, so to see which one can get the best deal. Whatever the deal is, you have to live with. You have to explain to your taxpayers, although you are responsible for whatever the contract involves, you have given up your responsibility and turned it over to an individual who has no interest in whether the town can pay for it or not. So that issue of binding arbitration concerns me greatly and I urge you to vote against the amendment.

SENATOR LARSEN: Senator Green, we know that there is currently binding arbitration allowed to fire and police officials. While it may not be in the statute, everyone understands that it is a negotiated feature of many contracts for police and fire. Do you support that being a permissible negotiated item for police and fire officers?

SENATOR GREEN: Personally, I do not support binding arbitration, period. I made that clear in what I said. I would also comment on the comments that were made. Police and fire have different types of arrangements under the law than teachers. Teachers are protected differently under the law, whether they are a beginning teacher or the first three years or whether they have what we call or I call a continuing contract or it is referred to as tenure. Police and fire do not have that, so they are already treated different now, so don't give me the argument that we are going to be treating teachers different than somebody else. We are already treating them different, so I don't see that as an argument that has any validity.

SENATOR LARSEN: Do you not have concerns that contract...for the respect of a negotiated contract item, what is to safeguard police and fire contracts from further changes by the legislature if we find that we don't like a portion of their negotiated contracts?

SENATOR GREEN: I don't think that this deals with police and fire, so I am not interested in that issue, but anything that comes before me as an individual Senator, that has binding arbitration in it, I think that you are taking away the responsibility of the elected officials to represent the people who vote for them.

SENATOR LARSEN: Thank you.

SENATOR BELOW: Thank you Mr. President. I rise in support of having the best quality teachers possible in our public schools. I also rise in support of a reasonable, just, efficient process to get rid of teachers who are not living up to the standards expected of them by the local school boards.

### POINT OF ORDER

SENATOR D'ALLESANDRO: Mr. President I have a point of order.

SENATOR EATON (In the Chair): Yes, Senator D'Allesandro, you may proceed.

SENATOR D'ALLESANDRO: Mr. President, I just don't think that it is proper for one Senator to interrupt another Senator when a Senator is testifying. There is ample opportunity to question one another. There is ample opportunity to speak. Certainly it is not consistent with good manners. It is not consistent with good courtesy. It is not consistent with the rules and regulations that we live by in a civilized society. That should not happen. Thank you Mr. President.

SENATOR BELOW: Thank you Mr. President. I think that everyone here is well intentioned in wanting to ensure that we have the best quality teachers. I think that this legislature arose out of a concern that there have been instances where there have been difficulties in getting rid of bad teachers. I am not sure that that is a significant number for instance, we haven't really heard that evidence. In fact, what we have heard is that the vast majority, 95 percent of all nonrenewal issues get resolved without any litigation, without going to binding arbitration or to the courts or to the school board. In fact, a large number of teachers either accept their nonrenewal or are counseled out of the profession by their colleagues. But if you believe as I believe, in the concept of competitive free markets, we have to recognize that our teachers are living in a competitive labor market. Our school districts have to compete with private employers, with other states, with other public jobs for the best quality employees that we can afford. What I have handed out is a graph that I have been tracking for a few years that shows the ratio, the average public school teacher salary to the median or medium household income. That is the point at which half above, half below. When I first did this, New Hampshire ranked 47<sup>th</sup> three years ago. In this latest available data, New Hampshire has dropped to 50<sup>th</sup>. We are the last in the nation in the ratio of our average teacher salary to the median typical household income in the state. We are far worse than any of our neighbors. In fact, we are distinctly worse than the next worse state. We are at only 75 percent average teacher salary of the average median household income. Nationally, the average is 103 percent. The median in the nation is about 99 percent, where Maine and Connecticut are. Our nearest neighbors, Vermont and Massachusetts are at 95 and 92 percent respectively. That is a very big gap. The point here is that we are already having a problem competing for the good quality teachers. What this bill does is make it even worse. What the amendment does is try to correct that and strike a balance. To try and

strike a balance to a reasonable, fair and efficient process to get rid of teachers that aren't performing adequately. Just a little over a month ago the Department of Education and the New Hampshire Forum on Higher Education released a report pointing out that growing educator attrition rates and the fact that some 3,000 teachers are very close to retirement could create a potential for a huge teacher shortage crisis in New Hampshire. Forty-percent of New Hampshire's educators are approaching retirement. Twenty-seven percent of newly hired educators leave the field within the first five years. Some of them, many of them by nonrenewal, but many more by choice because they can get better paying jobs with better benefits, better package of employment in the private sector or in other states. It is interesting, that while the number of people who sought teacher certification in our state over the last few years has risen steadily. Forty percent of them do not become employed in our schools or leave the profession within just a few years. We know that the key to our future economic prosperity is having the best educated workforce possible, preparing our youth for high technology employment, for higher education. We know that the key to that is the best quality teachers. What are we doing with the underlying bill here? We are singling them out for worse, different and worse treatment than any other public sector employment. In fact, worse treatment than many of them can get through private employment contracts. We are leaving them with no meaningful means of appealing, what may in fact be an unfair, unreasonable, unjust dismissal. Why? Because there is no meaningful review. You have set up a situation where all that they have to be given is a report, whether it is substantiated or not of inadequate performance. You have set up a situation where there could be...what might be called "political firings", not politics in the sense that we are engaged, but politics in the sense of local school politics when a schoolboard member gets upset because a teacher didn't play their child on a team how they thought they should be played. You end up with situations that have happened historically, where teachers are dismissed because of some internal political thing not because of their performance so much. What we have done is eviscerate any meaningful appeal if the underlying bill passes. The amendment strikes one balance. It creates an opportunity to avoid unnecessary cost and litigation. It creates an opportunity to make the profession of teaching something that people who are entering it feel like they are respected and that they have a fair shot at being treated fairly in the employment process. In the past, as we have debated this, we have sought compromises to recognize that if arbitration is by statute, taken away as an option, that the trade-off be some meaningful, single appeal to the state School Board. We have talked about language that will allow the state School Board to overrule if they find that it is unjust or unreasonable. We struck a compromise that everybody agreed to in the last session, but it caved from the House position. I realize that the majority can go ahead with this, but I ask you to think, is this really in our best interest in maintaining a competitive marketplace for the highest quality teachers that we want in our public schools. Thank you Mr. President.

SENATOR GATSAS: Senator Below, can you tell me what the actual dollar amounts are versus the percentages?

SENATOR BELOW: I have it on a spreadsheet. I could tell you every single one of them for every state. What I can tell you is a little bit of ranking. We, in this data period, I think, rank 32 in absolute terms and in terms of our average teacher salary. We rank seventh or eighth in

average income and we rank in about eleventh in medium income. That is significant. I use median household income rather than the average because our median ranks a little bit lower because our average is skewed by a higher number of high income households in the nation as a whole. When you combine eleventh in median household income with 32<sup>nd</sup> in average wage, that is the worst ratio in the nation. Other states, your teachers salaries are more in line with what the median household income is, in fact, they are very close to equal on average. So that is the kind of numbers. I can, if you give me just a second, I think that I can give you a couple of those numbers. New Hampshire, the average...the national average teaching salary was \$44,500 for this 2002 period. New Hampshire was \$38,900 in that period, and yet we are way above average in terms of what people get paid in the private sector in this state.

SENATOR GATSAS: Is that 75 percent?

SENATOR BELOW: That would be correct. The \$38,900 would be 75 percent of the median household income.

SENATOR GATSAS: Clarification. Is that 75 percent of the national average of teachers salaries?

SENATOR BELOW: No. The 75 percent would be the ratio of that average teacher salary divided by the median household income in New Hampshire.

SENATOR GATSAS: Thank you.

SENATOR CLEGG: Senator Below, I am a little bit confused and that is not hard these days. Is the median household income...well the household income, is that the entire income from all of the people living in that household, so would that represent a husband and a wife?

SENATOR BELOW: Yes.

SENATOR CLEGG: And you are comparing the incomes of two people and the salary of a teacher as 75 percent of the income of two people as a household?

SENATOR BELOW: Whatever the average household is. The average household or the typical household...a median household is not two people, it is something less than that. I don't know if it is 1.3 or 1.7. That is correct. It is giving some...I don't have a figure for average salary in New Hampshire, so that is just not an option for comparing, this is a relative comparison with other states, as a relative ranking. We rank 50<sup>th</sup>.

SENATOR CLEGG: Okay, but I want to be clear. The teachers salaries in New Hampshire are 75 percent of the median household income, which is one person, is 75 percent of the income of 1.6 or 1.7 people?

SENATOR BELOW: Something. Whatever the median household average size is. The significant point is, yes, teachers salaries are above the average salary, but I think that they should be. They have one of the most important jobs in our whole economy. They are responsible for educating the future generation. We entrust our children on a daily basis to the teachers. You are darned right that they should be getting paid more than the average salary. They have above average education level and that is not to be any surprise to anyone. Thank you.

SENATOR CLEGG: Thank you.

SENATOR D'ALLESANDRO: I rise to speak for the amendment. Let me set the universe for you in terms of teachers in New Hampshire: There



are 16,307.7 FTE. That is the full-time equivalency of teachers in the state of New Hampshire. Of those, 75 percent are women. Of those, 50 percent are 50 years or older. So think about what we are doing. Our universe is 16,000 and three-quarters of them are females, so we are isolating females, and we are saying 'wait a minute we are going to treat you a little differently'. Then half of them are 50 years of age or over, so we are also going to look at them based on age. Now guess what? I was a teacher. I started in the business in 1961 as a teacher at Kennett High School in Conway, New Hampshire. I have spent my entire professional life in education. Then I became a school board member in Manchester and I spent 10 years on the board negotiating with teachers. Let's put a couple of axioms on the table. Axiom number one: You don't get arbitration without bargaining for it. So both management and teachers agreed, this is something we have put in the contract. Why are we taking away bargaining rights? We people believe in fairness. Teachers believe in fairness. It is kind of a universally accepted thing. So we want to be fair. If I bargain for something, then why shouldn't it be part of the process if I am going to lose it? What did I give up in terms of bargaining for this? Did I give up salary increases? Did I give up other benefits in this give-and-take process? Obviously we did. There is nothing that says that this arbitration must be in the contract, we bargained for it. We also know that teachers are hard to come by. Matter of fact, we have given teachers one of the great, great indexes in our society. We say that they are critical. We have a critical shortage and we are trying to find ways to induce people to come into this state and to teach because it is a critical shortage area. If I am critical, it sort of means that I am on the brink, right? I mean, when you are critical you want the best surgeon, you want the best of everything when you are critical. Well guess what? It is critical! And we are saying to this critical shortage area, wait a minute, items that have been bargained for by previous teachers, school boards are going to disappear. So when you come, when we recruit you for this critical shortage area, we are going to say, but, you don't have any rights. Now wait a minute, a fairly well educated people, everybody has a college degree, in some states they are asking for a Masters Degree before you can get into teaching, and then we are going to say that they don't have bargaining rights? When I first started teaching in Manchester at Bishop Bradley High School and Andy Martel might be able to relate to this: A woman by the name of Miss Little came over to us from Manchester High School Central. Miss Little was the typing teacher at Manchester High School Central. She retired. Miss Little came to the teachers room and said "There was a time at Manchester High School Central when things got so bad that they came to me and said that I had to take a ten percent cut in salary or I couldn't keep my job". Miss Little had no bargaining rights in those days. She was only paid like \$1,500 so she took a ten percent cut in pay. There was no arbitration. There was nothing. It was take it or leave it. She was a wonderful teacher. She took it. She was a female...and in those days females had very few other places to go, and she stayed in education. Are we doing the same thing by presenting this piece of legislation? Are we targeting a particular segment of this society which we all accept as critical to the economic viability of this state, of this nation? We want a well educated workforce. We want well educated people. Why? Because the better education, the better the decisionmaking process. The better the decisionmaking process, the better life. We have gone around and around on this piece of legislation. This isn't the first time that we have seen it. It keeps reoccurring. Well,

bad pennies show up all of the time. The idea is that we have to deal with it. It just appears to me that if we are fair and we believe in fairness, then we accept the amendment and then we move forward. Thank you Mr. President.

**SENATOR O'HEARN:** Thank you Mr. President. This is not about targeting, about a particular segment. This is not about salaries. This is not about women. This is not about being fifty years plus. And is certainly should not be about a shortage area, and certainly a critical shortage area and unsatisfactory performance in the teaching profession should not be put together because teachers do have one of the most important jobs. And because teachers do not want to be working with other teachers that are performing unsatisfactorily. I was also a teacher. We have waited for compromised language since 1995. The taskforce was formed in 1998 and I will tell you that the taskforce came together to provide compromised language. The amendment is no compromise at all. I have not heard one person here speak about the recipients of unsatisfactory performance. That is the children. We have enough worries to deal with when we deal with accountability and funding. It is time that we do the right thing and help our superintendents and our school boards do their job and I ask you to vote down this floor amendment. Thank you.

**SENATOR BELOW:** Thank you Mr. President. Nobody wants unsatisfactory teachers in our schools. Nobody in this room, I am sure of it. This bill, however, is about the conditions of employment and whether we are going to treat the profession with the respect that it deserves and whether we are going to make it a profession in which we attract high quality people who want to be treated fairly or not.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Cohen.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 6 - Nays: 17**

**Floor amendment failed.**

**SENATOR COHEN:** I feel like I have to add my voice against this bill without the amendment. We are all interested in our economic future. The security of economic future. I think that we all recognize that education is critical to that economic future for the reasons that have been mentioned before, so that people can have the skills that they need going into this new 21<sup>st</sup> century. It has been mentioned before that we are in a critical shortage right now. We all know teachers. Does anyone think that they do it for the money? They don't do it for the money. They do it because they are dedicated to our children. They are dedicated to education. They get a personal reward from educating our children. That is reality. What is this bill? What is the message to our educators if we pass this bill, that your job is not secure? It is exceptionally easy to terminate you. This bar of clearly erroneous is an exceptionally high bar

and it could lead, I am afraid, to a witch-hunt mentality, a lack of due process leads to an atmosphere of fear amongst our educators. Is this what we want to do? Do we think that by doing this, by destabilizing our teacher community is good for our children's future? We should be valuing our teachers. And the notion that we are going to have different **TAPE CHANGE**

**SENATOR CLEGG:** Thank you Mr. President. I am a little puzzled at the thought by some that we are treating people differently. I remember just last year that the professional firefighters had a bill put into the House that requested binding arbitration for police and firefighters. I also remember that it was this chamber, which at the time was pretty much 50/50 party wise, that killed the bill. So I am puzzled as to why now, teachers are being treated differently. I don't see that they are. I don't see any other profession where thirty-five percent of their retirement costs are paid for by the state. I don't see that for the fire departments, I don't see that for the police departments. I see that teachers are getting treated better. But when it comes to contract negotiations, and how dismissals are handled, I think that it should be equal. I think that we should in fact, allow the school boards to remove teachers who aren't performing properly. I urge my colleagues to vote for the bill as it stands.

**Question is on the committee report of ought to pass.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Cohen.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**The following Senators voted No: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 17 - Nays: 6**

**Adopted.**

**Ordered to third reading.**

**SB 85-FN**, making certain revisions to the special education laws. Education Committee. Ought to pass with amendment, Vote 2-0. Senator O'Hearn for the committee.

**Senate Education**  
**February 26, 2003**  
**2003-0414s**  
**04/01**

#### **Amendment to SB 85-FN**

Amend RSA 186-C:2, I as inserted by section 1 of the bill by replacing it with the following:

I. "Educationally disabled child" means any person 3 years of age or older but less than 21 years of age who has been identified and evaluated by a school district according to the provisions of RSA 186-C:7 and determined to be mentally retarded, hearing impaired, speech or language impaired or both, visually impaired including blindness, seriously emotionally disturbed, orthopedically impaired, otherwise severely health impaired, deaf-blind, multi-disabled, traumatic brain injured,

autistic, or as having specific learning disabilities, who because of such impairment, needs special education or special education and educationally related services. "Educationally disabled child" shall ~~[not]~~ include a child aged 18 through 21, ~~[-who, in the educational placement prior to his or her incarceration in an adult correctional facility was not actually identified as being a child with a disability or did not have an individualized education program]~~ **who was identified as an educationally disabled child and received services in accordance with an individualized education plan but who left school prior to his or her incarceration, or was identified as an educationally disabled child but did not have an individualized education plan in his or her last educational institution.**

Amend RSA 186-C:18, VI(a) as inserted by section 2 of the bill by replacing it with the following:

(a) Catastrophic aid payments under paragraph III on or before January 1 ~~[-School]~~, **provided that school** districts shall submit their catastrophic costs to the state board of education by ~~[June 30]~~ **July 31** of ~~[each fiscal]~~ **the previous** year. The state board of education shall then verify the cost and distribute the appropriate amounts for the previous ~~[fiscal]~~ year on or before January 1 of each ~~[fiscal]~~ year.

SENATOR O'HEARN: Thank you Mr. President. I move SB 85 ought to pass with amendment. The law currently states that catastrophic aid costs must be submitted by June 30<sup>th</sup>. It's nearly impossible for schools to submit their costs by then, as districts have longer school years with snow days. Bills for out-of-district placement are usually not received until the first couple of weeks in July. They cannot submit their catastrophic aid costs until those bills have been received. The practice has not been to deny catastrophic aid even though their costs are submitted beyond the deadline. This legislation moves the deadline from June 30<sup>th</sup> to July 31<sup>st</sup> of the previous year to ensure practice and statute are in sync. The amendment corrects the language of the bill. The Education Committee asks your support for the motion of ought to pass with amendment. Thank you.

#### **Amendment adopted.**

SENATOR ESTABROOK: Thank you Mr. President. I brought this bill in as a request by the Department of Education and just wanted to rise to thank the committee for its consideration and appropriate amendment.

#### **Question is on the adoption of the bill as amended.**

#### **Adopted.**

#### **Referred to the Finance Committee (Rule #26).**

**SB 160-FN-A**, making a capital appropriation to continue construction of the vocational center in Nashua. Education Committee. Ought to pass, Vote 4-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you Mr. President. I move SB 160 ought to pass. According to statute, the Department of Education has included Nashua as being eligible for grants for renovating their vocational center but is not included in the Governor's capital budget. This legislation ensures that Nashua be included. The Nashua Vocational Center was the first of the vocational centers in New Hampshire to be built, which was over 25 years ago. It was built with old and second hand equipment. Renovating was essential. It now provides quality programs, which re-

flect national industry standards yet also include fundamental courses. Based on its regional alignment, students in nearby towns enroll in the vocational center's programs. The Nashua Vocational Center continues to expand its enrollment as many of its new programs are filled, and constantly seeks to improve itself. An investment in the vocational center is an investment on educational infrastructure, which is necessary for our local economies. The Education Committee asks your support for the motion of ought to pass. Thank you. I also want to thank Senator O'Hearn for bringing this bill forward. Thank you.

**SENATOR LARSEN:** I just rise to support this and to point out to the Senate as a whole, who may not have sat through as many hearings as we have over the years, that the vocational centers in our high schools, throughout the state are in significant need of reinvestment. All of them were helped with state assistance to be built. All of them are now falling way behind in their ability to offer up-to-date vocational training for the young people of our state. Oftentimes we know that through vocational education in our high schools, that is the way that we keep kids in school. This reinvestment in Nashua is valuable and I hope that we all make the commitment to continue funding through the orderly process, the updating of vocational centers throughout the state and in our high schools. Thanks.

**SENATOR BOYCE:** Mr. President, will this be going to the Capital Budget Committee?

**SENATOR EATON (In the Chair):** This will be going to the committee on Finance.

**SENATOR BOYCE:** Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 81-FN**, granting a retirement system annuity to the surviving spouse of Carl Morin. Insurance Committee. Inexpedient to legislate, Vote 3-1. Senator Prescott for the committee.

**SENATOR PRESCOTT:** Thank you Mr. President. I move that SB 81 be voted inexpedient to legislate as recommended by the Senate Insurance Committee. Before I go any further, I just wanted to extend my deepest condolences to the family of Carl Morin. It was very moving testimony and it moved the committee as well. His untimely death was initiated by this bill. Carl was a firefighter from the town of Berlin. He was killed in a tragic hang gliding accident in Vermont. He is survived by his wife Ann and their two children. As sad as their circumstances are, the Insurance Committee strongly feels that getting involved in this situation would set a dangerous precedent for future incidents. We do empathize with Ann and her family. We feel that their situation is not the time or the place for government to be inserting itself. Based on the fact that Carl was killed in a non-work oriented accident. Based on this belief, the committee recommended that this bill be voted inexpedient to legislate. Thank you Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**SB 82-FN**, relative to awards of fees and interest under workers' compensation. Insurance Committee. Ought to pass with amendment, Vote 4-0. Senator Flanders for the committee.

**Senate Insurance**  
**February 27, 2003**  
**2003-0422s**  
**04/09**

**Amendment to SB 82-FN**

Amend RSA 281-A:44, I as inserted by section 2 of the bill by replacing it with the following:

2 Workers' Compensation; Awards of Fees and Interest. Amend RSA 281-A:44, I to read as follows:

I. In any dispute over the amount of the benefit payable under this chapter which is appealed to the board or supreme court or both, the employee, if such employee prevails, shall be entitled to reasonable counsel fees and costs as approved by the board or court and interest ~~[at the rate of 10 percent per year]~~ on that portion of any award the payment of which is contested. ~~[The interest shall be computed from the date of injury.]~~ ***For the purposes of this paragraph, to "prevail" means:***

***(a) If the employee is the appealing party, the employee shall have received an award for disability benefits, medical, hospital, and remedial care, a scheduled permanent impairment award, vocational rehabilitation, or reinstatement of the employee, which is greater in amount than awarded by the decision which is the subject of the appeal;***

***(b) If the appeal is by the employer or insurance carrier, the appealed decision shall have been affirmed; or***

***(c) If the insurance carrier appeals multiple issues and the employee prevails on some, but not all, of the issues appealed, the board or court shall apportion and award fees to the employee's attorney only for the reasonable fees apportioned to the issues which were affirmed.***

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. This is another interesting cleanup bill. The amendment is on behalf of the Labor Department through the Advisory Commission as well as plaintiff and defense attorneys. What happened in this case, and those of us on JLCAR should listen to this because the Department of Labor realized that they had a problem and instead of coming back to change the RSA they changed it by rules. Some attorney decided that he wanted to challenge the rules and went all the way up and the judge said that rules are very nice, but we don't care what the rules says, we care what the RSA says. What happened as the result of this, is that if a person has a workers' compensation injury, say in 1990, and they received a medical bill in the year 2000 and the company denied it. Upon payment of that bill if they lost their case, they had to pay interest back to the date of injury. This bill just says that you have to pay interest back to the date of service, which obviously makes a lot of sense. This bill is approved by the Labor Department, by both plaintiff and defense counsel and it cleans up the RSA to make it more common sense. Thank you very much.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 135**, relative to hotel keeper liability for personal care services. Insurance Committee. Ought to pass, Vote 4-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. Senate Estabrook has helped me with this by presenting an amendment. There should be a floor amendment being passed out. To just give you a brief idea of what has happened here is that we put this in on behalf of the Balsams Hotel with the blessings of all of the other hotels. When people go to these hotels, they sometimes ask for babysitting service and the hotel gives them a list of local people that live in the surrounding towns who offer babysitting service. Then the parents contact these people and decide who they are going to pick to be their babysitter. They are afraid of liability because they present the list. This bill, very briefly, takes the liability away from the hotel when then the parents interview and pick the babysitter that they are going to use, if something happens or anything is stolen or anything is taken, the hotel is not responsible. That is the main bill.

Senator Estabrook offered a floor amendment.

Sen. Estabrook, Dist. 21

**March 6, 2003**

**2003-0566s**

**06/04**

### **Floor Amendment to SB 135**

Amend RSA 353:2-a as inserted by section 1 of the bill by replacing it with the following:

353:2-a Personal Care Referrals. No hotel keeper shall be liable for losses of goods or property or other damages sustained by a guest or other visitor based solely upon the furnishing by the hotel keeper of a name or names of persons available to provide personal care services for such guest or other visitor provided the hotel keeper receives no compensation for furnishing the information or the services provided and the hotel keeper has given written notice to the guest or visitor that the personal care service providers have not been evaluated by the hotel keeper. No such liability shall arise from furnishing the name of an employee of the hotel keeper provided the hotel keeper does not recommend or compensate any such employee for the provision of such personal care services and the employee is not acting within the scope of employment for the hotel keeper when providing such personal care services.

**2003-0566s**

### **AMENDED ANALYSIS**

This bill exempts hotel keepers from liability for losses of goods or property or other damages based on a guest's or visitor's use of a personal services provider whose name is furnished by the hotel keeper provided the hotel keeper receives no compensation for providing the information or services and gives written notice that the personal care service providers have not been evaluated by the hotel keeper. It also allows the hotel keeper to provide the name of an employee if the hotel keeper receives no compensation and the employee is acting outside of the scope of his or her employment when providing the personal services.

SENATOR ESTABROOK: Thank you Mr. President. I present for the Senate's consideration amendment 0566 which is going to be passed out. I intend it to be a friendly amendment. In my life prior to service in the legislature, I ran an office at the university that provided childcare information to parents. I know that we had to draft a policy for ourselves with legal advice to limit our liability and that a key element in doing

that was that we get written notice to the parents that these programs have not been evaluated. So I suggested and Senator Flanders seems to agree, that it would be appropriate to insert that into the bill. So on lines seven and eight, we simply have added the phrase "provided and the hotel keeper has given written notice to the guest or visitor that the personal care service providers have not been evaluated by the hotel keeper". Thank you Mr. President.

SENATOR LARSEN: I rise to support this floor amendment as one who actually has been at the Balsams and has used the babysitting services a few years ago. I see some other heads nodding in the group. This amendment, I think, helps parents understand that when you are given this list by the hotel, that in fact, it hasn't been evaluated and it gives a sense of awareness to a parent that they need to do their own checking of an individual before they leave their children with them. I think that the combination of both of these amendments, it helps parents and it also helps protect parents and gives them a heads-up that they have to do their own job of review. Thanks.

SENATOR FLANDERS: Thank you Mr. President. We thank Senator Estabrook for her assistance. This was discussed at the time of the hearing with the members of the Balsams Hotel, although it wasn't put in and we appreciate the addition and approve it. Thank you.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 123**, establishing a commission to study structures for increased voter education and improved enforcement of campaign practices laws. Internal Affairs Committee. Inexpedient to legislate, Vote 4-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move that SB 123 be inexpedient to legislate. Senate Bill 123 sought to establish a commission to study the structures for increased voter education and improved enforcement of campaign practices laws. The major portion of that, the education part of it, is being looked at by the commission to examine and assess the status of civic education in New Hampshire, which was HB 1151 of 2002. It is currently in the second year of working on issues regarding, specifically, the voter participation and matters relating to civic participation. Their report will be issued in November of this year. It is unnecessary to have a duplicative commission looking at the same issue; therefore, we feel that this should be inexpedient to legislate motion. Thank you.

SENATOR ESTABROOK: Thank you Mr. President. I am rather taken aback by the 4-0 inexpedient to legislate recommendation from the committee. Nine Senators, colleagues, Below, Cohen, D'Allesandro, Foster, Gallus, Larsen, Martel and Sapareto joined me in sponsoring this bill, expressing bipartisan support for studying improvements to New Hampshire's campaign practices. We are sorely in need of improvements. Voters are so disgusted with manipulated campaign messages they are tuning out. Not a good thing in a democracy. Candidates, knowing real consequences do not exist, continue to push the boundaries. Current statute provides only one alternative for enforcement of campaign practices laws, criminal prosecution. If convicted of willful violation of elec-



tion law, article 11 prescribes the penalty to include loss of the right to vote for life. This is such a serious penalty that a prosecution would be historic. According to the LBA fiscal note on a related bill SB 215, violations of 664:21 campaign practice laws, are misdemeanors if committed by an actual person and felonies if by any other person. A Class A misdemeanor carries the potential of incarceration and therefore, the potential of de novo appeals to the Superior Court for a jury trial. A felony offense can involve arraignment, bail and probable cause hearings in the district courts, numerous hearings and a jury trial in the Superior Court and an appeal to the Supreme Court. Why would anyone oppose studying a system of civil penalties as an alternative to these never used provisions? An alternative which would give teeth to our campaign practices laws. That is the question voters will be asking next election. I see later in our calendar that we have a 5-0 recommendation to study improving the enforcement of traffic laws, yet we are on the same day, unwilling to establish a commission to study improving campaign practices laws. Why? States around the nation have created mechanisms to better serve and inform electorates. We should sit down and figure out what will work in New Hampshire. I hope that we will not be the last in the nation to do so.

SENATOR LARSEN: Senator Boyce, because I serve on Public Affairs at the time; with Internal Affairs frequently is meeting and you exceed without my being with the meeting, my vote is not reflected here, and I didn't have a chance to talk about this in executive discussion with other members, but were you aware in the committee discussion that I serve on the Civic Study Committee Commission and that in fact, our civic study is not looking at campaign practice laws at all, as far as I know. We are not looking, certainly, at compliance with campaign practice laws. We are not looking at whether we should establish a clean election board such as this study would do. We are not looking at powers of such a board and whether there is a way that we can improve our election standards, our campaign procedures in our state and our enforcement's to allow for civil penalties or misdemeanors. All of those things which are included in this study are not part of what our discussion has been on Civic Education as far as I know. The only reference is perhaps to increase voter education which indirectly relates to some of the things that we are doing in looking at high schools and various schools around the state to educate young people. Did you have that kind of discussion? Were you aware that the Civic Commission is not in fact, looking at any of the clean election laws? Are you not concerned that we need to look at some of our campaign practices and that we may in fact as a state, be better off if we had some other ways of improving compliance with our campaign practices, because right now, it seems that we have very few enforcement procedures available?

SENATOR BOYCE: You brought up several things. First: certainly we would have known about those things if you would have come to our committee hearing that day...

SENATOR LARSEN: I was working.

SENATOR BOYCE: We did have a discussion on this, but the idea that we need to change our campaign laws kind of begs the question of there haven't been any...which have been brought up recently...there have been no prosecutions in recent memory for any of the existing laws and the previous speaker mentioned that the voters are tuning out. I wonder, does that ignore the fact that we had one of the highest turnouts

ever, in the last election. That voters are tuning out when they are coming out to vote in nearly record numbers, if not record numbers. I am curious, you know, if we need to be looking at that anyway. We don't seem to have a large problem, I don't believe, with this type of campaign fraudulent practices. We certainly have a problem with fraudulent voting which was dealt with in another bill recently, but I don't think that we have a large... I don't believe that we have a problem with this area of the law.

SENATOR LARSEN: You don't believe that we have problems with our campaign practices in this state?

SENATOR BOYCE: No I don't.

SENATOR LARSEN: Thank you very much.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise to speak against the motion and say to you really, candidly, here we are an educated body, and a body that gets elected and tries to increase participation by ourselves. Anything that we can do to promote that kind of makes sense to me. I think that Senator Estabrook clearly pointed out that we are willing to create a commission to study traffic laws, but we aren't willing to create a commission to talk about increased voter education and improving campaign practices. It just seems to me that there was a campaign practice in New Hampshire in the last general election that A) caused the resignation of the executive director of one of our parties and B) is under investigation by the United States Attorney. But if that is not enough, then we ought to move in another direction. But that is pretty bad isn't it? A guy resigns, leaves his job and the U.S. Attorney is investigating the practices that interrupted peoples ability to get to the polls. That is not significant? Well what is significant? Closing the polls so that nobody can vote? We have a situation right here in New Hampshire. It happened last time. So to say that there isn't a problem, I think, is to just push the situation under the rug. The other situation, I think, is our special election in Manchester on Tuesday where only ten percent of the electorate turned out to vote. Only ten percent. People have got to understand how important it is and if the violations are at such a level that they are never going to be enforced, then what good are they? We should just extricate them from the books and kind of move forward. Thank you Mr. President.

SENATOR BARNES: Senator D'Allesandro, would you believe that I believe that the case you talked about isn't a big deal until the party is proven guilty?

SENATOR D'ALLESANDRO: I would believe that it is not a big deal until the party is proven guilty, by the same token, if I might say, the action has already been committed. The action was committed. It is a done deal.

SENATOR BARNES: Would you believe that I don't believe the decision hasn't been reached whether it was done or it wasn't done? It is up to the investigation to find out. In America, I think, we are innocent until we are proven guilty. That hasn't changed, I don't think.

SENATOR D'ALLESANDRO: No that hasn't.

SENATOR BARNES: My civics teacher taught me years ago that that was the case. You were not my civics teacher.

SENATOR D'ALLESANDRO: No, I missed you in class, I am sorry. I had the other section. Thank you Mr. President.

SENATOR O'HEARN: Thank you Mr. President, I would just like to reiterate some of the discussion that we had in committee. It had to do with civic education and civic education is not just for the young. We are looking at increased voter education, which is the purpose of this particular piece of legislation. I will repeat that we are doing that in civics education. The question was why are voters tuning out? Tuning out...there are many, many questions out there on why voters are tuning out and it is not just campaign practices of one party or the other. I think that before one party points a finger at another party, I think that they need to look within their own party first. Thank you.

SENATOR CLEGG: Thank you Mr. President. I would like to speak to as to why everyone seems to believe that the voters are tuning out. It is because when we stand up to speak, the only thing that we have to say is something bad about the other side. So until we start talking about actual issues and how to resolve them, more and more people will tune out. But I do have to point out, as Senator Boyce said, that we have in the last election, not counting Manchester, had record or near record turnouts. So I believe that people are listening and they are coming out. Maybe they are listening a little more than they used to. But as far as this commission, you can accomplish the same thing with an ADHOC Committee. We have a discussion here today about the telephones and how they are being misused. Just yesterday in Interstate Cooperation, we had a bill that discussed that very issue. In a bipartisan manner, we are working to tighten the law up a little bit so that it can't happen again. We have the ability to trace back. But what they did in the last election, both sides, wasn't legal. We know it's not legal. So having a commission isn't going to make any difference. There are still some people who believe in dirty campaigning and no commission, no study committee, nothing we can do will ever change that. But it is my belief that inexpedient to legislate is proper and that should everyone still have a desire to do what they wanted this commission to do, that they sit down as an ADHOC Committee and do so. Thank you Mr. President.

SENATOR ESTABROOK: Thank you Mr. President. First, I just wanted to point out that the bill has bipartisan sponsorship, this bill has nothing to do with partisanship. When Senator Boyce was reiterating the committee's objection, he, himself said that there have been no prosecutions. That is exactly the problem. We all know that there have been violations of our existing campaign practices laws. We have laws on the books about placement of campaign signs, literature, push polling, various campaign practices that are already illegal in New Hampshire, but as Senator Boyce pointed out, there have been no prosecutions to fight the fact that we all know that there have been violations. There have been no prosecutions because the avenue to prosecute is so severe. If you had push polled in Illinois the way that they push polled in New Hampshire, you would be paying a \$10,000 fine. I think that it is extremely appropriate for us to sit down and decide whether that is something that we want to have happen in New Hampshire. That should not be happening in an ADHOC Committee. It should be happening in a formal committee that is authorized by this body and is done in public.

**Question is on the committee report of inexpedient to legislate.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Johnson, Kenney, Boyce, Flanders, Odell, Roberge, O'Hearn, Clegg, Barnes, Morse.**

**The following Senators voted No: Gallus, Below, Green, Peterson, Foster, Larsen, Gatsas, Martel, Sapareto, D'Allesandro, Estabrook, Prescott, Cohen.**

**Yeas: 10 - Nays: 13**

**Motion failed.**

Senator Estabrook moved ought to pass.

**Adopted.**

**Ordered to third reading.**

**SCR 1**, urging a study of the operating efficiency of state government. Internal Affairs Committee. Ought to pass, Vote 4-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move that SCR 1 ought to pass. Senate Concurrent Resolution 1 urges the commissioner of the Department of Administrative Services to form a taskforce to study the operating efficiently of state government and in prior legislation was vetoed by the Governor and in the veto message she stated that the legislature could not tell the Executive Branch to perform this efficiency study. Therefore, this was brought forward as a Resolution urging the executive branch to do such a study. Senate Concurrent Resolution 1 reflects the position of the Senate and the Internal Affairs Committee recommends its adoption. Thank you.

SENATOR BELOW: Senator Boyce, isn't there a House Bill that does the same thing, but does it by statute rather than concurrent resolution which doesn't have the effect of law pending before the Senate now?

SENATOR BOYCE: I believe that there is a House Bill pending before the House. I am not sure that it has been sent over here yet. Certainly we will want to try and combine the two at some point, if that is the case that it comes over here.

SENATOR BELOW: Well I believe that the bill is pending in the Executive Departments and Administration Committee. Wouldn't it be more efficient to go ahead and do that combining now rather than sending a superfluous or extra bill back over to the House?

SENATOR BOYCE: I think that it might be appropriate to do something like table this until we can make that check. I would have no problem with that.

SENATOR BELOW: Okay.

### **MOTION TO TABLE**

Senator Larsen moved to have **SCR 1**, urging a study of the operating efficiency of state government, laid on the table.

**Adopted.**

### **LAID ON THE TABLE**

**SCR 1**, urging a study of the operating efficiency of state government.

**SB 111**, relative to the standardized protocol for investigating and interviewing victims of child abuse and neglect and relative to the de-

velopment of multi-disciplinary child abuse investigation teams. Judiciary Committee. Inexpedient to legislate, Vote 4-0. Senator Peterson for the committee.

SENATOR PETERSON: Thank you Mr. President. I rise to move inexpedient to legislate on SB 111. The sponsor of the bill delivered in writing to the committee, a request that we inexpedient to legislate the bill. Senator Cohen sent along this note to me in the committee, and we abided by his wishes; however, the bill does deal with a very important area about a standardized protocol for investigating and interviewing victims of child abuse and neglect. Senator Cohen has reported to the committee, that due to his efforts and bringing forward this bill, and with the help of former Portsmouth Police Chief, Brad Russ, county attorneys and Governor Craig Benson, funds have been obtained and secured from the federal government to allow this to move forward. I congratulate Senator Cohen on his effort on SB 111 and I am glad to report that it is now no longer necessary for legislation. Thank you Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**SB 140-FN**, establishing an optional renewal period for licenses to carry a pistol or revolver. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Clegg for the committee.

**Senate Judiciary**  
**February 21, 2003**  
**2003-0396s**  
**04/05**

**Amendment to SB 140-FN**

Amend RSA 159:6, II as inserted by section 1 of the bill by replacing it with the following:

***II. As an alternative to the application procedure in paragraph I, a resident of this state may request that license renewal under this section coincide with the applicant's driver's license renewal date as established in RSA 263:14. The application process and fee for residents of this state exercising this option shall be as provided in paragraph I, provided that the application fee may be prorated during the period in which an applicant changes from a four-year license to a five-year license.***

SENATOR CLEGG: Thank you Mr. President. I move SB 140-FN ought to pass with amendment. The bill accomplishes two things: It changes the renewal period for licenses to carry a pistol or revolver from four years to five years; and it allows the option of having the license expire at the same time the driver's license expires. The provisions of this bill would apply only to in-state residents and would provide a simple reminder of when to renew a license to carry. The Judiciary Committee recommends that SB 140-FN be adopted as amended. Thank you.

SENATOR LARSEN: I rise to unpredictably support SB 140. While it does extend the license to carry for an additional year, it actually will, I believe, help with compliance of renewals in reminding people that their renewal date is up by linking it with drivers license applications. I think that sometimes it is good to be a little bit unpredictable. I rise to support SB 140.

**TAPE INAUDIBLE**

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Prescott.**

**Seconded by Senator Cohen.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Below, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Estabrook, Morse, Prescott, Cohen.**

**The following Senators voted No: None.**

**Yeas: 23 - Nays: 0**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 149-FN, establishing criminal penalties for the use of a credit card scanning device or re-encoder to defraud. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Peterson for the committee.**

**Senate Judiciary  
February 26, 2003  
2003-0412s  
05/10**

#### **Amendment to SB 149-FN**

**Amend RSA 638:28, II and III as inserted by section 1 of the bill by replacing them with the following:**

**II. "Re-encoder" means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card.**

**III. "Payment card" means a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.**

**Amend the introductory paragraph of RSA 638:29, I as inserted by section 1 of the bill by replacing it with the following:**

**I. A person is guilty of the crime of using a scanning device or Re-encoder to defraud when the person knowingly:**

**Amend RSA 638:29, II(a) as inserted by section 1 of the bill by replacing it with the following:**

**(a) A class B felony if such person has one or more prior convictions under this section, has been convicted of a similar offense by a court of any other state in a criminal proceeding, or has been found to have committed a similar act by a court of any other state in a civil proceeding.**

**SENATOR PETERSON: Thank you Mr. President. I thank my fellow Senators for the ringing vote of support on the last measure. I move SB 149-FN ought to pass with amendment. Senate Bill 149 establishes criminal penalties for the use of a credit card scanning device or Re-encoder to defraud. This type of fraud, generally called "skimming", is the fastest growing type and has the potential to become even more prevalent. **TAPE CHANGE** What happens is when their customer presents their credit card for payment in a restaurant or other establishment, the employee passes the card through an electronic device about the size of a palm-pilot. This device records all of the information about the card. Later the employee illegally sells the information, which is used to fraudulently run up expenses. Because the "theft" doesn't show up until subsequent bills arrive, there can be significant amounts of**

fraudulent charges before the incident is reported to the credit card company. This results in months of wrangling in order to clear up one's credit report. The committee amendment corrects two typographical errors, inserts the word "knowingly" and clarifies the Class B felony convictions. The Judiciary Committee requests the Senate's support in adopting SB 149-FN as amended and thanks Senator Morse and others for bringing forward this important legislation. Thank you.

SENATOR BARNES: Senator Peterson, does this protect people when making a purchase over the telephone and giving their credit card information out to say California for, let's say, Red Sox baseball tickets in Anaheim this coming year?

SENATOR PETERSON: Perhaps other members of the committee can help me with this. I believe that any skimming practice would be covered by this bill. I believe that Senator Below has comments.

SENATOR BARNES: Senator Below, same question and I see that our attorney is shaking his head no.

SENATOR BELOW: Yes, thank you. Right. This bill does not cover that instance, but instances covered in statutory language does. So misuse of the credit card information is already against the law, this provides some additional... takes it up to a Class B felony for the skimming act, to specifically include that because what the current law is, somebody just skims the data hasn't necessarily misused it in New Hampshire, because what they do with it is that they sell it to other parties, even out of the country, Hong Kong. What happened in Hanover, New Hampshire was a restaurant waiter who came in obviously for employment just for the purpose of skimming, did some skimming and skipped town, and huge bills started showing up from Hong Kong and other parts of Asia within weeks of this person leaving employment. That person didn't do anything wrong under New Hampshire law because he is not the one who misused the credit card information. So if you call in and somebody takes that credit card information and misuses it, then that is against the law.

SENATOR BARNES: Senator Below, does New Hampshire law cover if I get ripped-off in California?

SENATOR BELOW: There is a New Hampshire statute that protects you. I am sure that there is federal law that covers that situation. I see our Senate Counsel has some information. But this bill was not intended to try to address those other situations. It specifically establishes the definition for skimming.

SENATOR BARNES: I have just been informed that if the Angels rip me off with my credit card that our counsel will represent me in California. Thank you Mr. President.

SENATOR BOYCE: I rise to speak. I rise in favor of this bill and the amendment. As a recent victim of...if not exactly this practice, a very similar practice. One of our credit cards was cloned apparently, and was used first on Internet gambling to the tune of over \$1,000 and then for dinner in two restaurants in France. The indication the credit card company gave us was that the restaurants indicated that...both restaurants indicated that the card was present, so apparently a cloned card was made and was used in this fraud. Luckily our credit card company was very quick to find that this was something unusual on our account and called us and asked us if we did these things and immediately put a hold on those transactions and canceled that card for us. It is happening and it is a problem. We need to make an effort to make it stop. Thank you.

SENATOR PETERSON: As it has been pointed out many times, these charges result in activities that happen out-of-state or even out of the country, but this bill deals with the matter of skimming a credit card within our state and makes it illegal. It was interesting in the testimony before the committee, that the average bank robbery averages about \$1,500, but identify theft of this type, on the other hand, averages at \$26,000 net and yet the penalties are much, much lower. Therefore, it is important that we have legislation and the Class B felony language here is a strong statement about our feelings about it. Thank you.

SENATOR GATSAS: Senator Boyce, was it the dinners in France that made the credit card company call you or was it because of the gambling?

SENATOR BOYCE: They indicated that they were surprised that the Internet gambling was approved to begin with...that their policies on that were to prevent that type of use of the card in any event; however, it was the restaurant use in France that did bring it to their attention.

SENATOR GATSAS: I am sure that your wife was happy to hear that.

SENATOR BARNES: I think that it was the big tip that you left that did it.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 188-L**, establishing a commission to study improving the enforcement of traffic laws in high traffic areas. Transportation Committee. Ought to pass, Vote 5-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you Mr. President. I move SB 188 ought to pass. Senate Bill 188 establishes a commission to study improving the enforcement of traffic laws in high traffic areas. The commission will study first, the impact of traffic law violations on public health and safety, on quality of life in New Hampshire citizenry and on the public protection of children. Second: it will review the reasons for the current inadequate enforcement of traffic laws by state and law enforcement agencies, including lack of manpower, insufficient traffic surveillance equipment. Third: the commission will determine possible funding to provide for law enforcement officer positions and sufficient traffic surveillance equipment such as federal grants, private donations and increasing the portion of fines retained by municipalities for violation of state laws and local ordinances. Lastly, it would study how best to enhance driver awareness of being in compliance with speeding and reckless driving laws. This bill has the support of the Department of Safety and the Department of Transportation. The Transportation Committee urges you to support SB 188. Thank you Mr. President.

SENATOR BOYCE: Senator Kenney, this mentions traffic surveillance equipment. Would that be speed cams and red light cameras and that type of equipment, is that what they are envisioning?

SENATOR KENNEY: Off the surface, I would say yes, that is what we were envisioning at this point.

SENATOR BOYCE: Isn't that the equipment that some companies had promoted and got installed in some states and then were profiting hugely from the misfortune of some of the citizens of those states, who some-



times were not evenly actually violating a law, but appearing to when the camera was pointed in their direction? And also in some states, they have regretted having done this? It was a revenue enhancement issue and not an actual enforcement issue, is that not what I understood somewhere?

SENATOR KENNEY: Senator Boyce, if you have studied that and you have read that then I believe that it is so.

SENATOR MARTEL: Thank you Mr. President. I also move that SB 188 be ought to pass. I will answer the questions if I could after. This bill establishes a commission to study that concurrent enforcement of traffic laws in these high traffic areas and make recommendations and improvements and enforcements of traffic laws by state and local enforcement agencies. The 15 member commission will be made up of legislators and members of the court, local and state law enforcement officials, town and city representatives and private citizens. I sponsored this bill in response to hundreds of comments and complaints by constituents and law enforcement officials regarding traffic control. I feel that this study committee will begin the process of taking back control of our neighborhood city streets and sidewalks and that law-abiding citizens should not be threatened or intimidated by disrespectful drivers. So I move that SB 188 ought to pass and I thank you. If I could answer Senator Boyce's question. This would be electronic equipment that we would be talking about that would be placed, not anything hand-held unless it was a hand-held radar by a local person, law enforcement person.

SENATOR BARNES: Senator Martel, I would assume that these hundreds of complaints that you got from citizens all came out of the Manchester area?

SENATOR MARTEL: Well most of them did, Senator, but there were some that came out of Litchfield, and believe it or not I had somebody that called me from Londonderry and other locations where people knew me.

SENATOR BARNES: Would you believe that I believe, if we had more police officers around instead of all of this stuff that we would be able to enforce the traffic laws, but without the police officers on the road to enforce it, that is why you have a problem? We don't have enough police officers taking care of that issue.

SENATOR MARTEL: I believe that technically, you have made a correct statement. I believe that we do have enough police officers, but the police officers in many cases, might become detectives rather than take traffic control.

SENATOR BARNES: This is in Manchester or Litchfield?

SENATOR MARTEL: I will say, in my city.

SENATOR BARNES: Oh, okay.

**Adopted.**

**Ordered to third reading.**

**SB 147**, establishing a committee to study alternative strategies to relieve the property tax burden on private educational institutions and to encourage scholarships to New Hampshire students. Ways and Means Committee. Ought to pass, Vote 4-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you Mr. President. I move ought to pass on SB 147. Under state law, private, not-for-profit educational institutions are the only not-for-profit organizations in the state that are subject to property taxation. During the past few years, postsecondary education institutions have been forced to shoulder a higher and higher tax burden, putting our small private colleges at a competitive disadvantage and dangerously close to financial jeopardy. While recognizing that the property tax is a critical piece of the budgeting process in communities focused on resolving their own funding challenges, our committee heard that the current \$150,000 property tax exemption has not been reviewed since it went into effect in 1904, when an entire campus was worth that amount. The bill directs the study committee to identify measures that would provide some relief to our educational institutions while keeping the municipalities' tax base whole. The bill also asks the study committee to explore the idea of reimbursing educational institutions up to the value of the property tax they pay if they give scholarships of equal or greater value than their property tax bill to New Hampshire residents. The committee unanimously voted ought to pass and we urge the full Senate to do the same. I have something for each one of our Senators. It is a piece that was published by the New Hampshire College and University Council in the forum that indicates the economic impact of higher education on the state of New Hampshire. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 171**, regulating activities which may cause the introduction and spread of infectious wildlife diseases. Wildlife and Recreation Committee. Ought to pass, Vote 3-0. Senator Cohen for the committee.

SENATOR COHEN: Thank you Mr. President. There will be an amendment coming. A friendly amendment that addresses a problem that was not foreseen in the committee hearing. It is an amendment that I would urge the full Senate to support. Senate Bill 171 will allow the executive director of the Department of Fish and Game to adopt rules regulating activities that may cause the introduction and spread of infectious wildlife disease. Senate Bill 171 was sponsored at the request of the Department of Fish and Game to specifically address the spread of chronic wasting disease. This disease is a fatal, neurological disease of farmed and wild deer and elk. To date, chronic wasting disease has been found in nine states and has no known treatment vaccine or live animal test for it. The Fish and Game Department believes that they will be able to monitor this and other infectious diseases through rule changes allowed under SB 171. The Wildlife Federation fully supports this bill and would like to see the state take these preventive measures to protect our wildlife resources from the spread of infectious disease. I also did speak this morning with Cliff McGinnis, the state veterinarian who agreed with the amendment that will be coming from Senator Clegg. They were concerned that without the amendment, that Fish and Game could have shut off the import of domestic animals, which was not the intention of this bill. I would urge passage of this bill and then acceptance of the floor amendment.

Senator Clegg offered a floor amendment.

Sen. Clegg, Dist. 14

**March 6, 2003**

**2003-0559s**

**04/05**

**Floor Amendment to SB 171**

Amend the title of the bill by replacing it with the following:

AN ACT regulating nonagricultural activities which may cause the introduction and spread of infectious wildlife diseases.

Amend RSA 206:10, I as inserted by section 1 of the bill by replacing it with the following:

I. It shall be the duty of the executive director to function as the chief administrator of the commission and to protect, propagate and preserve the fish, game and wildlife resources of the state and to protect and conserve nongame birds of the state. The executive director shall, subject to the limitations hereinafter set forth, have the power and authority to adopt and enforce rules, pursuant to RSA 541-A, for the adequate and effective control, management, restoration, conservation, and regulation of the fish, game, bird and wildlife resources of the state, ***including rules designed to prohibit or otherwise regulate nonagricultural activities which may cause the introduction or spread of infectious disease in the state's wildlife resources.*** Such power and authority shall include the right to open and close the season for taking fish, game, birds, and wildlife, the right to fix the size, number and weight limits, and other conditions governing the method and manner of taking the same. Such power and authority may be exercised with reference to the state as a whole, or for any specified county or part thereof, or for any lake, pond, stream or part thereof.

**2003-0559s**

**AMENDED ANALYSIS**

This bill allows the executive director of the fish and game commission to adopt rules regulating nonagricultural activities which may cause the introduction and spread of infectious disease in the state's wildlife resources.

SENATOR CLEGG: Thank you Mr. President. The amendment, as Senator Cohen has stated previously was to take out the regulation of nonagricultural activities and leave those with the state veterinarian as they are now. I know that this should take care of the concerns of many of the Senators after their many phone calls. The Forest Society, the Agricultural Group and the state veterinarian are the ones that proposed this language. Thank you.

SENATOR JOHNSON: I want to thank Senator Clegg for bringing this amendment forward. I have a large deer farm in my district and he has been very successful and has worked hard. This is not the first time that this issue has come up. I think that the state veterinarian has been doing a great job on the issue that I am concerned about, so I just want to thank Senator Clegg again for bringing this forward.

SENATOR ESTABROOK: Thank you Mr. President. I, too, just wanted to rise to thank Senator Clegg for the amendment. I had received calls from an elk farmer in my district who was very concerned about the very same issues. I appreciate the swiftness of the repair job on this bill. Thank you.

SENATOR D'ALLESANDRO: Thank you Mr. President. I don't want Senator Clegg to get cocky, but we certainly appreciate, in a bipartisan fashion, we appreciate his willingness to listen to our concerns about this piece of legislation and the way that it was handled, I think, was truly indicative of how the Senate works in a bipartisan manner. Thank you. Thank you Mr. President.

SENATOR BELOW: I guess that I can't resist here. I also thank Senator Clegg and note that the state veterinarian has been very attentive to this similar concern and has come before the Joint Legislative Committee on Administrative Rules a number of times, with emergency rules to prevent in the farm species, the potential spread of diseases that could affect the wildlife species as well. I think that he will work well with the Fish and Game on this issue. Thank you.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SCR 2**, urging the United States Congress to act to rectify the science, research funding, and restrictions governing the Northeast multispecies fishing industry and its impact on New Hampshire fishermen. Wildlife and Recreation Committee. Ought to pass, Vote 3-0. Senator Cohen for the committee.

SENATOR COHEN: Thank you Mr. President. I move SCR 2 ought to pass. This Senate Concurrent Resolution urges the United States Senate and House of Representatives to review the science and restrictions governing the Northeast multispecies fishing industry. Current federal restrictions are jeopardizing the very existence of New Hampshire's commercial fishing industry. Historically, it is one of the state's oldest, most culturally significant industries and an important contributor to our economy. The Fish and Game Department estimates commercial fishermen bring in over \$100 million dollars in revenue a year. The most recent restriction the federal government wants to impose upon New Hampshire's fishermen is a 3-month continuous closure during the months of April, May and June. If our fleet is kept from fishing, they may lose up to 50 percent of their annual income. Fishermen can't possibly afford that. That is not what New Hampshire needs and it is not in our interest. Fish stocks are rebuilding to levels not seen in a number of years. If sensible regulations are put in place, this recovery will continue without destroying the commercial fishing industry. Our state's fishermen have no interest in over fishing. They are small family owned vessels and they endorse a common sense, biologically sound approach to maintain the fish stock for future generations. We need to take a stand and urge our federal delegation to ease these unfair restrictions in order to protect this historically significant hardworking, valuable industry. I move SCR 2 ought to pass. Thank you very much.

**Adopted.**

Senator Foster (Rule #42) on SCR 2.

**Ordered to third reading.**

**SJR 1**, approving certain uses of Weeks state park. Wildlife and Recreation Committee. Ought to pass with amendment, Vote 3-0. Senator Gallus for the committee.

**Wildlife and Recreation**  
**February 11, 2003**  
**2003-0257s**  
**03/04**

**Amendment to SJR 1**

Amend the resolution by replacing the fourth and fifth paragraphs after the resolving clause with the following:

3. The design of any communications installation within the existing tower and any necessary ancillary structures shall be approved by the Weeks State Park Association

4. Any revenue generated by the installation or lease of any communications equipment at Weeks state park which exceeds the operating expenses associated with the communications equipment shall be remitted to the department of resources and economical development, division of parks and recreation.

SENATOR GALLUS: Thank you Mr. President. I move SJR 1 ought to pass with amendment. This Senate Joint Resolution will allow for the installation of communications equipment at Weeks State Park. The Weeks family and Coos Economic Development Corporation fully support the language of SJR 1. The strategic placement of a communications tower on top of Mount Prospect will help facilitate DSL and cellular connections in Coos County, a region that has limited telecommunications abilities. The tower's design will be compatible with the appearance of other park buildings and will by no means interfere with the landscape or quiet enjoyment of the park. In addition, the amendment to SJR 1 will remit all revenues derived from the communications equipment over and above the expenses to the state's Division of Parks and Recreation. I move SJR 1 ought to pass as amended and I thank you.

SENATOR BARNES: Senator Gallus, is this the stuff that we can take as a state Senates to help things up there in the North Country?

SENATOR GALLUS: Absolutely. It is sort of an underserved area of the state with DSL and telecommunications if you are there and you can't use your cell phone, and you can't hook up to the Internet with fast speed service, this is certainly a step in the right direction for western Coos county.

SENATOR BARNES: So when this chamber votes 24 to 0, it is going to help the north country?

SENATOR GALLUS: And we would appreciate it.

SENATOR BARNES: And keeping score.

SENATOR GALLUS: We are.

SENATOR BARNES: Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time,

that all bills ordered to third reading be by this resolution read a third time and all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

## **LATE SESSION**

### **Third Reading and Final Passage**

**SB 68**, authorizing electronic certification of educational credentials.

**SB 76**, relative to the process for nonrenewal of teacher contracts.

**SB 77**, relative to bond votes in school districts with official ballot voting procedures, and relative to adoption of revisions and the budget process in city charters.

**SB 82-FN**, relative to awards of fees and interest under workers' compensation.

**SB 121-FN**, relative to mortgage originator registration.

**SB 123**, establishing a commission to study structures for increased voter education and improved enforcement of campaign practices laws.

**SB 135**, relative to hotel keeper liability for personal care services.

**SB 147**, establishing a committee to study alternative strategies to relieve the property tax burden on private educational institutions and to encourage scholarships to New Hampshire students.

**SB 164**, relative to the unauthorized use of a financial institution's name.

**SB 171**, regulating nonagricultural activities which may cause the introduction and spread of infectious wildlife diseases.

**SB 188-L**, establishing a commission to study improving the enforcement of traffic laws in high traffic areas.

**SCR 2**, urging the United States Congress to act to rectify the science, research funding, and restrictions governing the Northeast multispecies fishing industry and its impact on New Hampshire fishermen.

**SJR 1**, approving certain uses of Weeks state park.

## **ANNOUNCEMENTS**

**SENATOR PETERSON (RULE #44):** Thank you Mr. President. It has been my honor and privilege to sit for the last few years as a member of the New England Board of Higher Education on behalf of our state. It is a board which is populated by many distinguished educators, college administrators, college presidents and effective legislators. One of our own, a person who has served in all of those roles was recognized in a meeting which we had just this last weekend down in Boston. I would like to make some comments for the record on that occasion. Almost half a century ago, Mr. President, six New England governors realized that New England's future hopes rested with higher education, and formed the New England Board of Higher Education or NEBHE, committing their states to the shared pursuit of excellence. Today a college education has become a prerequisite of upward mobility – a pathway to economic success and civic engagement. Each New England state is represented on the New England Board of Higher Education by eight delegates – leaders of education, business and government who are appointed by their states' governors and legislative leadership. Over the weekend, the NEBHE board elected a new chairperson, someone whose experience in higher education

is extensive indeed. This person received his BA from the University of New Hampshire and has ever since been involved with higher education. He holds an Honorary Doctorate from Daniel Webster College as well as other degrees from the University of New Hampshire, Rivier College and Harvard University. He was the Director of Admissions at New Hampshire College; he was the President and Chief Executive Officer at Daniel Webster College; he was the Executive Assistant to the President of New England College; he was the Director of Community Relations and a Marketing Consultant at the Merrimack Valley College of the University of New Hampshire in Manchester; he was the President and Chief Executive Officer for Nasson College in Maine; he was the Vice President for Continuing Education at Franklin Pierce College, and is presently a member of Franklin Pierce's adjunct faculty. I also noted from looking at his resume, that he was judged to be New Hampshire's outstanding young man in 1971. There are many other educational committees in which he is an active participant throughout the community. The man to whom I am referring, and it is no secret to those who know him, is Senator Lou D'Allesandro. It is my honor to recognize Senator D'Allesandro for being named chairperson for the NEBHE for the upcoming years 2004 and 2005. I ask my colleagues to join me in applauding his many years of service and to wish him well in his new leadership role.

SENATOR D'ALLESANDRO (RULE #44): Thank you Mr. President and thank you Senator Peterson. One of the great joys of this life has been the opportunity to serve and to be involved in education and to be involved in politics, and to be involved with people. I think that I got that from my father. I have often said before this body and before others, that my greatest regret in life is that my mother never had an opportunity to see any of her sons progress in this life. My mother passed away when she was only 32 years of age. Her four boys were very small. We came from very humble beginnings. I mentioned on more than one occasion that we came from a cold water flat in east Boston, Massachusetts. I lived on the third floor of a three tenement house. I am very gratified and thankful that I have been able to do some things because of opportunities that people have afforded me. I am very, very grateful to the kinds of friendships that I have developed and the kind of support that I got from my family and certainly from my wife, which has just been something that I treasure, obviously, but it is great to be here. I said this when I first came. One of the things that I do sometimes when I am driving home is I pinch myself and I say "son of a gun, I am a member of the New Hampshire State Senate". To me, it is sort of like the epitome of making it. Andy, I thank you very much. I met Andy Peterson when he was a young kid. He stopped me on the road, I was driving back from Keene and he was working for Bobby Witcomb on a construction job that summer. He stopped my car and he said, "Hi, I am Andy Peterson. I am Walter Peterson's son". That was our first interaction. I appreciate him and his collegial relationship here. Thank you very much, Mr. President and thank you Andy. To all of my colleagues, thank you very much.

SENATOR GATSAS (RULE #44): Mr. President, I noticed that everyone was looking around the room. If in one of the remarks you would have said "the teacher of everybody in New Hampshire"... then Senator Estabrook wouldn't have wondered who it was. But certainly as we normally have resolutions in the Senate, Senator D'Allesandro, certainly there is not enough room in here to bring all of the students of New

Hampshire that you have had in the past, but I know that Senator Martel, being one of your past students, I am sure is very appreciative of you being here with us.

SENATOR MARTEL (RULE #44): Thank you very much Mr. President. I have known Senator D'Allesandro for probably, well I don't want to admit this...for over 40 years. He has been a very close friend of mine. He did teach me in high school. He taught me in college. He has also served on some organizations with me as well. He helped me save Catholic Medical Center on one hand and on the other hand, he and I worked on a committee to establish an education scholarship for a good friend of mine and a former student of his as well, Tommy Mullen in Manchester. I wish that Tommy could be here today to see this. He would be very proud. He has thousand of students like myself who had the opportunity to have him as a teacher. I am pleased to have had the opportunity to have him twice and then to serve in the Senate with him is just icing on the cake.

SENATOR SAPARETO (RULE #44): Last week, HCR 16 was presented to the Speak of the House of Kashmir, the Prime Minister of Kashmir, the President of Kashmir, the Foreign Minister of Pakistan, the Senate of Pakistan and the President of Pakistan. I can tell you that nowhere was that resolution more welcomed than by the people of Kashmir. On their behalf, I want you to know that we did a good thing. Thank you.

SENATOR D'ALLESANDRO (RULE #44): Thank you Mr. President. I just want to bring to the attention of everyone in the Senate, that the Honorable Sylvia Larsen, last evening, was honored by the Business and Professional Women of Concord for a Woman of Achievement for 2003. Senator Barnes and I were at this gathering and the accolades that came forth with regard to Sylvia's work were absolutely magnanimous. So, Sylvia Larsen, Woman of the Year. Woman Achiever of the Year for 2003. So hardest congratulations to Senator Larsen.

SENATOR BARNES (RULE #44): I am sorry that you folks, or a good number of you missed what I had to say about Sylvia so I am going to say it here in the Senate Chamber. One of my comments were that Sylvia and I shared three things in common: One of them sure isn't politics because we sometimes don't vote alike, too often. We do have the same florist shop. The Square Rose down the road because I happened to be in there around Valentines Days trying to get some flowers for my girlfriend, and I ran into the husband of our Senator, and he was so happy that he received flowers the day before from our Senator Larsen. I am very happy that we have the same florist. Senator Larsen and I also shared the honor of having run for the Senate Presidency and coming in second. Coming in second isn't bad, right Sylvia? We got a big round of applause for that. Third, and all kidding aside, I went there last night for Sylvia because here again, not for political reasons, but because I believe Sylvia is here for the people that she represents. I think that sometimes, some of us up here, time to time, forget why we are here. I think that our egos get in our way and I think that we get too big for our britches and our skirts, sometimes. But Sylvia, over the seven years that I have served with her on many committees, I have always seen her work hard for the people that we are here for. We are all here for our constituents and not ourselves. That is the reason that I went to see Sylvia, even though I had to empty my bag once in a while during the evening, it was worth my time to go there and salute my colleague, Senator Larsen.



SENATOR LARSEN: (Rule #44): I am sorry, it is very hard to sit quietly. It was a tremendous honor last night, but I truly value Jack's coming and sorry that I missed the Senate reception, but it is evenings like last night when we all understand each other as people that make us all work better together. Senator D'Allesandro, you are touching the future in the way what you have done as a teacher and you are touching all of us in your full-bodied way of speaking and acting, has endeared you to all of us. In every case, the more that we have an opportunity to know each other as people and listen to each others thoughts, in a way that opens our ears to the thoughts of others, the better this Senate will work. So I hope that we continue to have evenings of such collegiality and days like today where I think that we have had a very good civic discussion. Thanks.

SENATOR EATON (In the Chair): Thank you Senator Larsen and congratulations.

### RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, receiving House Messages, and receiving Enrolled Bill Reports and Amendments, and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

**In recess to the Call of the Chair.**

**Out of Recess.**

### LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*March 13, 2003*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

For the past twenty-five years, I have been fortunate to have had a very special friend who has been the second most wise, sensible, realistic and influential person to have come into my life. In our e-mails and letters and phone conversations and lunch meetings over the years, we talked about the whole range of subjects that come up in life – including, I'll have you know, the New Hampshire Senate. My friend died the week before last. His name was Fred Rogers and I suspect he was your friend too, and even more likely, a friend of your children. Here's one of the things Mr. Rogers said, that I think it would be good for you and me to remember this morning, and every morning:

"As human beings, our job in life is to help people realize how rare and valuable each one of us really is, that each of us has something that no one else has – or ever will have – something inside that is unique to all time. It's our job to encourage each other to discover that uniqueness and to provide ways of developing its expression."

Not a bad tool by which to evaluate all of your political dealings, in fact, all of your dealings. Period.

Let us pray:

*O God, You are the Creator by whom we are each fearfully and wonderfully made. Give us eyes wide open enough to see within each other that thumbprint of Your sacred touch, for then we will know how to behave.*  
*Amen.*

Senator Odell led the Pledge of Allegiance.

## **INTRODUCTION OF GUESTS**

### **COMMITTEE REPORTS**

**SB 165**, relative to the voluntary dissolution of nondepository trust companies. Ought to pass with amendment, Banks Committee. Vote 5-0. Senator Odell for the committee.

**Banks**

**March 7, 2003**

**2003-0593s**

**06/01**

### **Amendment to SB 165**

Amend RSA 392:43 as inserted by section 1 of the bill by replacing it with the following:

392:43 Voluntary Dissolution of Nondepository Trust Company. A trust company organized as a nondepository institution under the provisions of RSA 392 or under the provisions of RSA 392-A may voluntarily dissolve in the manner provided in this chapter. Such dissolution may be accomplished by the liquidation of the trust company or by reorganizing the trust company into a domestic or foreign corporation, limited liability company, limited partnership, or limited liability partnership that does not have banking or trust powers, and in both instances surrendering its trust company charter to the board of trust company incorporation. A trust company that reorganizes into any other entity pursuant to this section shall not engage in any activity that is authorized only for a bank or a trust company.

Amend RSA 392:46 and 392:47 as inserted by section 1 of the bill by replacing them with the following:

392:46 Approval of Voluntary Dissolution; Filing Fee.

I. A nondepository trust company seeking to dissolve its charter shall file an application for dissolution with the board of trust company incorporation accompanied by a filing fee of \$1500 payable to the bank commissioner. The bank commissioner shall examine the application for completeness and compliance with the requirements of this section, the domestic business entity laws applicable to the requested type of liquidation or reorganization, and its rules. The application shall include a comprehensive plan of dissolution setting forth the disposition of all assets and liabilities, in reasonable detail to effect the liquidation or reorganization. Among other things, the plan of dissolution shall provide for the discharge or assumption of all of the nondepository trust company's known or unknown claims and liabilities and the transfer of all of its responsibilities as a trustee to a successor trustee or trustees. Additionally, the filing shall include such other certifications, affidavits, documents or information with respect to the dissolution as the board may require to understand how such assets and liabilities will be disposed of, the time table for effecting disposition of such assets and liabilities, and the applicant's proposal for dealing with any claims that are asserted after the dissolution has been

completed. The bank commissioner may conduct a special examination of the applicant for purposes of evaluating the application. Cost of the special examination shall be paid by the applicant.

II. If the bank commissioner finds that the application for dissolution is incomplete, the bank commissioner shall return it for completion not later than 60 days after it is filed. If the application is found to be complete by the bank commissioner, he or she shall so notify the board in writing and shall report any information he or she has obtained from an examination of the applicant to the board. Not later than 30 days thereafter, the board shall hold a hearing for the purpose of determining whether the plan of dissolution disposes of the assets and liabilities in a lawful manner, is fair and equitable to all interested persons, has no adverse effect on the business of banking in the state and in general carries out the purposes and intentions of RSA 392:43-45. Not later than 30 days thereafter, the board shall either approve or not approve the application. If the board approves the application, then the applicant may proceed with the dissolution under the plan, subject to such conditions that the board may prescribe. If the applicant subsequently determines that the plan of dissolution must be amended to complete the dissolution, it shall file an amended plan with the board and obtain its approval to proceed under the amended plan. If the board does not approve the application or amended plan, if any, the applicant may appeal the decision pursuant to RSA 541.

III. Upon completion of all actions required under the plan of dissolution and conditions, if any, prescribed by the board of incorporation, necessary to liquidate the trust company or to effect the reorganization, the applicant shall submit a written report of its actions to the board of incorporation and the applicant's board of directors shall certify, under oath, that it is true and correct. Following receipt of the report, the bank commissioner may examine the trust company to determine whether the commissioner is satisfied that all required actions have been taken to liquidate or reorganize the trust company in accordance with the plan of dissolution and any conditions prescribed by the board. Not later than 60 days after the filing of the report, the board of incorporation shall examine the report and the bank commissioner's findings, and, if it is satisfied, shall so notify the applicant in writing that the dissolution has been completed and is final. Thereupon, the applicant shall surrender its charter to the board, and the board shall issue a certificate of dissolution to be filed with the secretary of state pursuant to RSA 392:47. If the board is not satisfied that all required actions have been taken, it shall notify the applicant in writing what additional actions shall be taken to be eligible for a certificate of dissolution. The board shall establish a deadline for the submission of evidence that the additional actions have been taken. The board may extend the deadline for good cause shown. If the applicant fails to file a supplemental report showing that the additional actions have been taken before the deadline, or submits a report that is found not to be satisfactory by the board of incorporation, the board shall notify the applicant in writing that its application is not approved, and the applicant may appeal the decision pursuant to RSA 541.

IV. The board may adopt rules, pursuant to RSA 541-A, relative to the procedures and requirements for a dissolution pursuant to RSA 392:43-47.

392:47 Procedure; Effect; Recording Fee. When the board of trust company incorporation approves a voluntary dissolution application, the applicant shall file the certificate of dissolution in the office of the secretary

of state, accompanied by a fee of \$35. In the case of a reorganization, the applicant shall also file the documents required by the secretary of state for domestic business entities to complete a statutory reorganization of the type approved by the board, including the organizational instruments for the reorganized entity. The secretary of state shall record the certificate and other documents, if any, and issue a certificate evidencing such liquidation or reorganization, as applicable. When the secretary of state has issued a certificate evidencing the liquidation or reorganization, as applicable, the dissolving banking corporation, limited liability company, limited liability partnership or limited partnership shall be deemed to have been voluntarily dissolved or reorganized, as applicable, with the same effect as if such voluntary dissolution or reorganization had been effected by a domestic business corporation, limited liability company, limited partnership, or limited liability partnership, by making the filings required of such domestic business entities under the provisions of state law applicable to such domestic business entities.

Amend RSA 392-A:3 as inserted by section 2 of the bill by replacing it with the following:

392-A:3 Capital; Other Funds. A merchant bank shall maintain capital at a level which is commensurate with the risk undertaken in connection with its loans, investments, and other activities, as determined **annually** by its board of directors, if it is a corporation, or its equivalent governing body if it is any other type of business entity, but in no event shall its capital be less than 6 percent of its assets. The initial capital of a merchant bank shall consist of common stock in the amount of at least \$2,500,000 paid in the form of cash or its equivalent. The balance of any capital required by the board of trust company incorporation may consist of preferred stock or other equity capital, subordinated notes, or debentures, as approved by said board. Notwithstanding the foregoing, the capital structure of a New Hampshire financial institution that reorganizes into a merchant bank may continue in the same form and amount as existed at the time of reorganization, provided that the capital is at least \$2,500,000. A merchant bank may borrow funds to engage in the merchant banking business only from accredited investors. Following the organization or reorganization of a merchant bank, if the bank commissioner finds that the capital is inadequate based on the risk profile of its investments, the bank commissioner may require that the capital be increased by an amount necessary to protect the safety and soundness of the merchant bank. ***A merchant bank may voluntarily dissolve, either by liquidation or reorganization into another type of business entity, in accordance with the provisions of RSA 392.***

Amend RSA 293-A:11.09 as inserted by section 3 of the bill by replacing it with the following:

293-A:11.09 Approval of Conversion of a Corporation. A corporation may convert to a limited liability company organized under the laws of the state of New Hampshire upon the authorization of such conversion in accordance with this section and fulfillment of the requirements of RSA 304-C:17-a. The board of directors of the corporation shall adopt a plan of conversion and shall submit the plan of conversion for approval of the shareholders in the manner provided for shareholder approval of a plan of merger under RSA 293-A:11.03 for a merger requiring shareholder approval. After a plan of conversion is authorized and at any time before the certificate of conversion is filed, the planned conversion may

be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedures set forth in the plan of conversion, or if none is set forth, in the manner determined by the board of directors. *The term "corporation," as used in this section, shall include nondepository trust companies incorporated as banking corporations under the provisions of RSA 392 or RSA 392-A. Such nondepository trust companies shall be entitled to employ the procedures provided in this section to voluntarily dissolve their trust company charters pursuant to RSA 392:43-47 and to reorganize as domestic business corporations subject to the provisions of this statute.*

Amend the bill by replacing section 5 with the following:

5 Effective Date. This act shall take effect 60 days after its passage.

SENATOR ODELL: Thank you Mr. President. I move SB 165 ought to pass with amendment. Currently New Hampshire is ranked as among the most attractive of states for trust companies because of its progressive regulation. As a continuation of our business-friendly laws, this legislation seeks to allow non-depository trust companies to voluntarily dissolve through one of two methods: either liquidation or reorganization. Currently the only avenue available is through the courts, which is very time consuming. In most instances the courts dissolve banks which have failed, not those that wish to dissolve voluntarily. This gives the Banking Commissioner and the board of trust company incorporation authority to approve or reject dissolution based on the application submitted. This legislation helps keep New Hampshire attractive to outside businesses while providing an expedient yet efficient method of voluntarily dissolving non-depository trust companies. The Banks Committee voted 5-0 for the motion of ought to pass with amendment and we ask for your support. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 146**, relative to eligible costs for training grants in the job training program for economic growth. Energy and Economic Development Committee. Ought to pass, Vote 3-0. Senator Prescott for the committee.

SENATOR PRESCOTT: Thank you Mister President. I move that SB 146 ought to pass as recommended by the Committee on Energy and Economic Development. Representatives of the technical college training program testified before the committee last week, explaining that current regulations are making it impossible for them to continue their training programs for small businesses throughout the state. Based on these current regulations that only allow them to recoup a small portion of their training expenses, most of the training centers throughout the state are actually operating at a loss. This legislation would help alleviate some of the financial burden, without affecting state expenditures at the same time. The committee recommends that this bill ought to pass, and I encourage the full Senate to do so. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 70**, creating the Great Bay Estuary district and making an appropriation therefor. Environment Committee. Ought to pass, Vote 3-0. Senator Cohen for the committee.

SENATOR COHEN: Thank you Mr. President. I move that SB 70 ought to pass as was recommended by the Senate Environment Committee. This bill will help alleviate a growing problem in the seacoast area of our state, in reference to proper disposal of wastewater from municipal sewerage treatment plants throughout the Great Bay Estuary. As many of us certainly know, the cost for operating and maintaining these plants is quickly becoming a major component of local budgets, and will soon place a large financial burden on many local communities if a cooperative effort is not undertaken quickly to combine the efforts of those throughout the seacoast. Senators Green and Prescott have worked hard to put together legislation to address this looming crisis, and I believe that all of us who represent communities along the seacoast, as well as throughout the rest of the state, can and should support this bill. Thank you very much.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 115**, establishing a commission to study implementing a recommendation of the New Hampshire estuaries project management plan and establishing the estuary alliance for sewerage treatment. Environment Committee. Ought to pass, Senator Vote 3-0. Cohen for the committee.

SENATOR COHEN: Thank you Mr. President. This bill can be considered a sister bill to the one that we just discussed, SB 70. This bill establishes a commission that will study the long-term effects of implementing a large, centralized water disposal project, as well as the best approaches toward organizing and maintaining such a large project. Again, I want to stress that the results of such legislation will undoubtedly save hundreds of thousands of dollars down the road for many communities in our state. I urge the Senate to pass this bill as recommended by the committee. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 155**, establishing a commission to study issues relative to large groundwater withdrawals. Environment Committee. Ought to pass with amendment, Vote 5-0. Senator Johnson for the committee.

**Environment**

**March 7, 2003**

**2003-0595s**

**06/01**

### **Amendment to SB 155**

Amend the title of the bill by replacing it with the following:

AN ACT establishing a commission to study issues relative to water withdrawals.

Amend the bill by replacing sections 1-3 with the following:

1 Commission Established. The general court recognizes that the waters of New Hampshire are a precious and invaluable resource upon which there is an ever increasing demand for existing, new, and competing uses. The general court further recognizes that an adequate supply of groundwater for domestic, agricultural, industrial, and recreational uses and for

fish and wildlife is essential to the health, safety, and welfare of the people of New Hampshire. Therefore, there is hereby established a commission to study ways to clarify the hierarchy of water uses while considering existing private property rights, to bring a balanced approach to water use among residential, public water supply, industrial, commercial, agricultural, recreational and other water users, and to review the current process by which all such new water users may reasonably and efficiently use state water resources, including consideration of potential regional impacts and local water management issues, in order to best protect and preserve an adequate supply of water for the state.

## 2 Membership and Compensation.

### I. The members of the commission shall be as follows:

(a) Three members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house.

(c) A representative of public water supplier interests, nominated by the New Hampshire Water Works Association, and appointed by the governor.

(d) The commissioner of the department of environmental services, or designee.

(e) The director of the water division of the department of environmental services, or designee.

(f) A representative of the International Bottled Water Association, nominated by the association and appointed by the governor.

(g) Two members of the public, appointed by the governor.

(h) Two representatives of different business water users, nominated by the Business and Industry Association of New Hampshire, and appointed by the governor.

(i) A representative of municipal interests, nominated by the New Hampshire Municipal Association, and appointed by the governor.

(j) A representative of the Society for the Protection of New Hampshire Forests, nominated by the society, and appointed by the governor.

(k) A representative of the New Hampshire Farm Bureau, nominated by the bureau, and appointed by the governor.

(l) A representative of Ski New Hampshire, nominated by the organization, and appointed by the governor.

(m) A representative of the joint board of professional engineers, architects, land surveyors, foresters, professional geologists, and natural scientists who shall be a hydrologist, geologist, or engineer, appointed by the governor.

(n) A representative of the New Hampshire Association of Conservation Commissions, nominated by the association and appointed by the governor.

(o) Two representatives, one representing construction activities and another representing mining, nominated by the Associated General Contractors of New Hampshire, and appointed by the governor.

### II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

3 Duties. The commission shall study ways to bring a balanced approach to water use among residential, public water supply, industrial, commercial, agricultural, energy, recreational, and other water users, and to improve the current process by which new water users may reasonably and efficiently use state water resources, including consideration of potential regional impacts and local water management issues,

in order to best protect and preserve an adequate supply of water for the state with particular attention to groundwater. This study shall include consideration of issues such as potential impacts on New Hampshire's environment, other water users, municipalities, and the state's economy. The commission may address other issues pertinent to water.

Amend the bill by replacing section 5 with the following:

5 Report. The commission shall make an interim report of its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2003. The commission shall make a final report of its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before June 30, 2004.

**2003-0595s**

#### AMENDED ANALYSIS

This bill establishes a commission to study issues relative to water withdrawals.

SENATOR JOHNSON: Thank you Mr. President. I move that SB 155 ought to pass with amendment as was unanimously recommended by the Senate Environment Committee. We are all aware that the issue of groundwater withdrawals has become a very important subject and we have to come to realize that water is a very valuable resource. A wide variety of members will sit on this commission, ensuring that every perspective is heard on this topic. The amendment adds two additional members to the commission. The committee voted unanimously that this bill ought to pass, and I ask the Senate to do the same. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 162**, establishing a committee to study water resources. Environment Committee. Ought to pass, Senator Vote 4-1. Prescott for the committee.

SENATOR PRESCOTT: Thank you Mr. President. We want to, in the Environment Committee, study water resources as a whole. This was presented to us by the honorable Senator Green. We urge the full Senate to pass this bill.

**Adopted.**

**Ordered to third reading.**

**SB 205-FN**, authorizing the state to accept the title of the dam and dikes at Smith Pond, Enfield, New Hampshire. Environment Committee. Rerefer to committee, Vote 5-0. Senator Below for the committee.

SENATOR BELOW: Thank you Mr. President. This bill covers the topic that will be reviewed by the legislative dam oversight committee, which looks at issues concerning state acquisition of dams. This is an orphan



dam that may create an opportunity for the state to preserve some significant land that abuts a wildlife management area. It is being referred to allow it to be further considered. Thank you.

**Committee report of rerefer is adopted.**

**SB 113**, changing the name of Plymouth state college to Plymouth state university. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Kenney for the committee.

**SENATOR KENNEY:** Thank you Mr. President. I move ought to pass on SB 113 which recognizes the evolution of Plymouth State College, an evolution that began as the Plymouth Normal School, then the Plymouth Teacher's School and Plymouth State College and now to Plymouth State University. The name change recognizes Plymouth's diverse constituencies, academic strengths and overall strategy as characteristic of a university. The Plymouth State College officials, staff, faculty, alumni, board of trustees and the Plymouth community, have worked hard this last year and a half to gain overwhelming support for this name change and they are commended for their united front. The Executive Departments and Administration committee unanimously recommends ought to pass and urges the Senate to do the same. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 145-FN-A**, relative to the duties of the board of trustees of the department of regional community-technical colleges. Executive Departments and Administration Committee. Ought to pass, Vote 3-0. Senator Peterson for the committee.

**SENATOR PETERSON:** Thank you Mr. President. I move ought to pass on SB 145 which would provide the trustees of the community and technical college with the fiscal authority to underwrite the New Hampshire Community Technical College Foundation. The NHCTC Foundation has assumed a greater role in the school's activities ever since state support relative to student population started to decline – student enrollment is up 30 percent at the community techs, while general fund support has dropped off from 44 percent of their budget to 33 percent. The foundation, which has helped to fill that gap with funds from federal grants and other outside sources, supports educational programs and scholarships for needy students. The ability of the foundation to help in the personal and educational development of community tech college students will be significantly enhanced with the passage of SB 145 which will affect non-general fund revenue only. Mr. President, a trained workforce is widely understood to be the key to the future economic prosperity of our state. I ask my fellow Senators to join me in support of the community technical college system and begin today by passing this bill as was unanimously done by the Senate Executive Departments and Administration Committee. Thank you Mr. President.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 157**, establishing a committee to study the vesting of development rights. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 3-1. Senator Prescott for the committee.

**Senate Executive Departments and Administration**  
**March 6, 2003**  
**2003-0563s**  
**06/01**

**Amendment to SB 157**

Amend subparagraph I(b) of section 2 of the bill by replacing it with the following:

(b) Three members of the house of representatives, appointed by the speaker of the house.

SENATOR PRESCOTT: Thank you Mr. President. I move ought to pass as amended on SB 157 which seeks to clarify the issue of "vesting" rights in development projects. Vesting, as defined in RSA 674, protects developers from new zoning ordinances for a four-year period once vesting occurs. The statutes currently say vesting occurs as long as a developer begins active and substantial work within 12 months of project approval by a city or town. However, a Supreme Court decision this past December redefined the standard such that vesting would be determined on a case-by-case basis. Municipal governments and developers are now more uncertain, not less, about what is required of them and the parties seem destined to litigate each project on a similar case-by-case basis. Senate Bill 157 would explore what steps need to be taken in order to provide the necessary guidance to our cities and towns to resolve this issue. The committee amended the bill from four members of the House of Representatives to three and another amendment should be coming forward which will establish a quorum at four members of the committee as opposed to the three that are in the bill now. This is part of an effort to help make all study committee guidelines uniform. The committee recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

Senator Green offered a floor amendment.

Sen. Green, Dist. 6

**March 10, 2003**  
**2003-0616s**  
**06/09**

**Floor Amendment to SB 157**

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

SENATOR GREEN: I have an amendment which will be handed out. The only thing that it does, if you look at the bill that is before you that we just approved, if you look at line 15, under the section called "quorum", you will find that the current bill says "three members of the committee shall constitute a quorum". The only thing that the amendment does is it makes it four members of the committee to constitute a quorum. I would so move that the amendment be adopted.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 210**, relative to the administrative procedures of the real estate commission. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 4-0. Senator Prescott for the committee.

**Executive Departments and Administration**

**March 6, 2003**

**2003-0582s**

**08/09**

**Amendment to SB 210**

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Disciplinary Actions; Informal Disposition. Amend RSA 331-A:28 by inserting after paragraph III the following new paragraph:

IV. Informal dispositions and the provisions of RSA 541-A:31, V shall not be available to the commission.

2 Repeal. RSA 331-A:28, IV, relative to informal dispositions by the real estate board, is repealed.

3 Effective Date.

I. Section 1 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect January 1, 2005.

SENATOR PRESCOTT: Thank you Mr. President. I move ought to pass as amended by the Senate on SB 210. Senate Bill 210 is a recommendation of the Joint Legislative Committee on Administrative Rules. The concern is that the use of informal consent agreements by the Real Estate Commission, although user-friendly, do not conform to due process norms. Currently, consent agreements are voluntarily entered into by a complainant and the real estate licensee, thus avoiding a public hearing, and usually result in the licensee paying a couple hundred dollar fine and possibly participating in continuing education. Really, nothing is resolved. This Senate Bill 210 as amended, pilots a more transparent process where complaints are heard and decided in a public forum. This will take place for a period of two years. The bill will automatically lapse this legislation and the amendment corrects an RSA reference in the bill. The committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 212**, requiring fiscal impact statements for interim administrative rules and prohibiting agencies from requiring by rule the submission of social security numbers. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 4-0. Senator Prescott for the committee.

**Senate Executive Departments and Administration**

**March 6, 2003**

**2003-0554s**

**03/10**

**Amendment to SB 212**

Amend RSA 541-A:22, III(h) as inserted by section 2 of the bill by replacing it with the following:

(h) Require a submission of a social security number unless mandated by state or federal law.

Amend the bill by replacing section 3 with the following:

3 Effective Date. This act shall take effect July 1, 2004.

SENATOR PRESCOTT: Thank you Mr. President. I move ought to pass with amendment on SB 212. Also a recommendation of the Joint Legislative Committee on Administrative Rules, SB 212 addresses the custom of state agencies to incorporate requests for social security numbers into their rules. Currently, the federal privacy act says no federal, state or local government agency may withhold benefits or privileges because someone refuses to provide their social security number, unless required by law. The privacy act also says the agency requesting the social security number is required to indicate what law or authority is requiring the number. Senate Bill 212 would bring New Hampshire law in line with federal law by not allowing the agencies to request the social security number unless the number is required by federal or state law. The bill was amended in committee to clarify the fact that a social security number can only be requested when federal or state law requires one and the effective date was changed from 60 days after passage to July 1, 2004 to allow agencies to develop new personal identifiers in their rulemaking. Senate Bill 212 also requires agencies to present a fiscal impact statement to the Joint Legislative Committee on Administrative Rules at the time interim rules are presented. The concern was that interim rules often become permanent and the fiscal impact is not reviewed until late in the process. The committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

SENATOR GATSAS: Senator Prescott, are you saying that the fiscal impact statements would not take effect until 2004?

SENATOR PRESCOTT: No. The 2004 deadline is so that the agencies can bring into rulemaking, how they would accept social security numbers, is my belief.

### PARLIAMENTARY INQUIRY

SENATOR GATSAS: Mr. President, I have a parliamentary question.

SENATOR EATON (In the Chair): Yes, go ahead.

SENATOR GATSAS: Is there a way that we can separate the question so that the fiscal impact statements would take effect sooner than the 2004 date?

**Senator Gatsas moved to divide the question.**

SENATOR EATON (In the Chair): It cannot be divided, but it can be amended with a floor amendment.

**The Chair ruled that the floor amendment was not devisable.**

### MOTION TO TABLE

Senator Below moved to have **SB 212** laid on the table.

**Adopted.**

### LAIID ON THE TABLE

**SB 212**, requiring fiscal impact statements for interim administrative rules and prohibiting agencies from requiring by rule the submission of social security numbers.

**HB 171**, establishing a commission to assess the operating efficiency of state government. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Peterson for the committee.

SENATOR PETERSON: Thank you Mr. President. I move ought to pass on HB 171 which will create an 18-member commission charged with reviewing the operating efficiency of the executive branch of state government. It has been over 30 years since anyone has undertaken a study of this kind, which at that time, under the administration of a person close to my heart, we found that such a review realized many efficiencies and strengthened the bonds between government and government employees. The current administration is very supportive of this bill, which I was proud to cosponsor, along with Representative Ed Moran in the House last year and again this year. The committee unanimously recommends ought to pass and asks the Senate to do the same. Thank you Mr. President.

SENATOR LASREN: I rise to support a study of the operating efficiency of state government. All of us support an efficient government that encourages cost savings, that has an accountable government and that there is no redundancy in our efforts. We do have a problem though, when we create a commission that in effect, is allowing great latitude as to who is appointed. On page one it talks about 15 representatives of the private or public sector, but doesn't outline where those members come from. Obviously one of the greatest ways to effect efficiency is to listen to the people who actually provide state government in this great state of New Hampshire. Those people are state employees. There is no guarantee, for example, in this list, that there will be any input from those in fact, who have the job of making government most efficient. In the arguments represented by Senator Peterson, he said that following the study thirty years ago, there was a strengthened bond between the state employees and the executive office, and yet, without this opportunity to serve on a regular basis, on this study, those voices will not be heard. There are other voices that we should probably be hearing from in the Efficiency of State Government Study. Just the other day, our Senate President was saying that we ought to listen more and hear more input from our university officials and the valuable input that academics in public administration can offer. We need to listen to ways through energy conservation that we can effect a better cost-savings in this state. Those things have been left out of HB 171 as suggested. I have a floor amendment to help make this bill better. It in effect, keeps many of the same appointments, but outlines a few additional appointments, so perhaps, if it is proper at this time, I would like to offer my floor amendment.

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist. 15

Sen. Estabrook, Dist. 21

Sen. Below, Dist. 5

**March 13, 2003**

**2003-0681s**

**05/09**

### **Floor Amendment to HB 171**

Amend paragraph I of section 2 of the bill by replacing it with the following:

I. The commission shall consist of:

(a) One member of the governor's office, appointed by the governor.

(b) One member of the house of representatives, appointed by the speaker of the house of representatives.

(c) One member of the senate, appointed by the senate president.

(d) Five members appointed by the governor, at least 2 of whom shall be nonmanagement, non-supervisory, state employees.

(e) Five non-legislative members, appointed by the speaker of the house of representatives, at least 2 of whom shall be nonmanagement, non-supervisory, state employees.

(f) Five non-legislative members, appointed by the senate president, at least 2 of whom shall be nonmanagement, non-supervisory, state employees.

(g) One academic in public administration from the state university system, appointed by the chancellor of the university system of New Hampshire.

(h) One representative of a non-governmental organization that is dedicated to effective energy-conservation measures, appointed by the governor.

(i) One representative of the State Employees' Association of New Hampshire, appointed by that organization.

SENATOR LARSEN: You will see floor amendment 0681 coming to you. It keeps many of the same members that are outlined in lines 10-18 of the original bill, but it says that five of the members appointed by the governor, two would be nonmanagement, nonsupervisory state employees. Those are the people, the front-lines of providing efficient government. Those are the people who could stand up and say, "hey there is a way to make this better, I do this every day for my living. There is a way that I can give you insights that you would not otherwise have". In the same way, the floor amendment adds the Speaker of the House, the Governor and the Senate President. It would look through what state employees they think would add valuable input. The new parts of this floor amendment add the academic and public administration from the state university system. It adds a representative nongovernment, that has energy conservation knowledge and it adds a representative of the State Employees Association. There is no harm in adding these people to this study. It adds great weight to the report. It adds the level of knowledge that many state employees can give to this commission. I urge you to see this as a friendly amendment and to see that it will in fact, strengthen the report. So I urge you to...I move that we adopt 0681 and vote ought to pass with amendment and I urge the rest of my colleagues to join me in this.

SENATOR CLEGG: Thank you Mr. President. I rise in opposition to the floor amendment. If you look in the bill, it already provides for this commission to meet with members of all of the departments. I would also like to point out that in the Governors' budget, there already is an incentive for the employees, in the state of New Hampshire, to point out areas of efficiency and they actually get bonuses for it. I think that we ought to keep the two separate. While this commission requires that they go and speak to the department heads, business groups, employees groups, local governments and others, I think that we ought to keep it clean. I think that we ought to allow the two programs to run simultaneously, and continue with the bill as it is. Thank you Mr. President.

SENATOR PETERSON: Mr. President, could you clarify for me, under our rules, I just want to be sure this amendment is properly before us. Is it the case that under our rules, when a committee has an ought to pass recommendation, when there is no amendment, that we need to vote first on the committee recommendation of ought to pass before considering an amendment? I may have misunderstood?

SENATOR EATON (In the Chair): No, it is not so.

SENATOR PETERSON: Thank you. I rise to speak to the amendment. Thank you Mr. President. I rise as well, to oppose the amendment, not because I don't desire this commission to have full input from the parties named, but simply because the bill, I believe, offers ample opportunity for this at this time. I reference lines 11-35 in the bill that lay out a process that is going to require significant input from all of the parties named. I also would add, Mr. President, that the House already considered a similar amendment, rejected it. Were we to add it to our Senate version, it would lead to conference and further delay on this important measure. The way that the bill is written, the committee needs to start getting its reports done by as early as July. Now that we have a situation where our chief executive is willing to lead the charge to have such a commission exist and bring forth its benefits, I think the time for delay is over and our need is to pass the bill as it came to us and move forward. Thank you.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise in support of the amendment. Being the old man around here, I have been around for most of these comprehensive reports on state government and they have been worthy. Many of the suggestions have been put in place that have made government more efficient and more responsive. It seems to me that during the Weld administration in Massachusetts when they were looking for efficiencies in government, it was a state employee who discovered the loophole that provided the Medicare situation. That was a wonderful situation for Massachusetts and certainly it was an embellishment for New Hampshire as it brought in billions of dollars for us during a very critical period. It seems to me, that when you put a commission together, what you want is the most comprehensive commission available, because you want input from those who are working in the trenches and who know the ins and outs of state government, and they can respond. That valuable input has been recognized as Senator Clegg clearly points out, by the Governor who said, "I am going to give bonuses to people in state government who come up with good efficiencies and good ways of making government more effective and more efficient". So the Governor recognized the importance of state officials and state workers in terms of a plan of this type. So it seems to me that we ought to carry that one step further and say that "those people" or "a person", state employee, should be part of this commission. It recognizes the significance and importance of a state employee. It gives them a feeling of being part of the process rather than being eliminated from the process. If you run two things parallel, what you have most of the time is contradictions that come up. We want a unified force that brings good efficiencies to state government and makes state government the most effective mechanism possible in delivering services to the people. By adding a couple of more people to this commission, I think, we arrive at that goal. To Senator Peterson's comments about the House, this is the Senate. This is the Senate. It is about time the Senate said, we are a deliberative body and when we make a decision, that is the decision made by the Senate. I know in the last term, there were times when we kowtowed to the House. Well that isn't the way. I have been in the House. We are a separate body. We are a deliberative body. If we think things are right, we ought to stand up and say 'this is the Senate'. We are 24 elected members, elected by the people. They are 400 elected by the people, but boy

we have an individual identity and we should never lose that identity. This is a bicameral legislature. It is not a unicameral legislature. We should stand up for what we believe in. Thank you Mr. President.

SENATOR BELOW: Thank you Mr. President. I rise in support of the amendment and the bill. I believe that the efficiency study is a good idea. I was pleased to see that the subpoena power that gave us so much heartburn in the last session when this was brought forward and it was a factor in the Governor's veto of it, it was removed from the bill, but I do believe that the floor amendment would make this a stronger, better study and I would urge the support of it. Thank you.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Below.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 6 - Nays: 17**

**Floor amendment failed.**

**Question is on the committee report of ought to pass.**

**A roll call was requested by Senator Peterson.**

**Seconded by Senator Kenney.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Below, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Estabrook, Morse, Prescott, Cohen.**

**The following Senators voted No:**

**Yeas: 23- Nays: 0**

**Adopted.**

**Ordered to third reading.**

SENATOR BOYCE: Mr. President. I have a question of the chair. Seeing that we have just passed HB 171 by a nice margin, and realizing that the Governor is in favor of that bill and probably will sign it, and realizing that SCR 1, which is on the table, had an identical purpose, and is now irrelevant, would it now be appropriate to have that taken from the table so that we can vote down the committee recommendation of ought to pass and make it inexpedient since it is no longer needed?

SENATOR EATON (In the Chair): If that is your wish.

#### **MOTION TO REMOVE FROM THE TABLE**

Senator Kenney moved to have **SCR 1** taken off the table.

**Adopted.**

**Recess.**

**Out of recess.**

**SCR 1, urging a study of the operating efficiency of state government.**



**MOTION TO TABLE**

Senator Clegg moved to have **SCR 1** laid on the table.

**Adopted.**

**LAID ON THE TABLE**

**SCR 1**, urging a study of the operating efficiency of state government.

SENATOR PETERSON (Rule #44): Thank you Mr. President. Just before we leave the subject on government efficiency, which is handled well in the resolution which we just put back on the table. I would like to thank Senator Boyce in particular, for all of his efforts over the last few years on this matter and thank the entire Senate for their unanimous vote on the bill just previous. Thank you Mr. President.

**SB 84-FN**, relative to eligibility for payment of medical benefits by the retirement system. Insurance Committee. Rerefer to committee, Vote 4-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. We move that SB 84 be rereferred back to committee for further review. On the surface, this bill appears to have good intent, by addressing a loophole in current regulations through which a small number of correctional officers have fallen. The committee has some questions about the finances of this. The finances of the retirement system and what this bill would cost? We have been asked to please rerefer this for study during the summer and bring it back next year. Thank you Mr. President.

**Committee report of rerefer is adopted.**

**SB 152**, relative to health insurance coverage for prosthetic devices. Insurance Committee. Ought to pass with amendment, Vote 4-0. Senator Martel for the committee.

**Insurance**  
**March 4, 2003**  
**2003-0487s**  
**05/10**

**Amendment to SB 152**

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Group Insurance; Coverage for Certain Prosthetic Devices. Amend RSA 415 by inserting after section 18-m the following new section:

415:18-n Coverage for Certain Prosthetic Devices.

I. Each insurer that issues or renews any policy of group or blanket accident or health insurance providing benefits for medical or hospital expenses, except for supplemental policies covering a specified disease or other limited benefit, shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state and whose principal place of employment is in this state, coverage for benefits for prosthetic devices that equal those benefits provided for under federal laws for health insurance for the aged and disabled pursuant to 42 U.S.C. sections 1395k, 1395l, and 1395m and 42 C.F.R. sections 414.202, 414.210, 414.228, and 410.100, as applicable to this section. The reimbursement rate for prosthetic devices under this section shall be no less or greater than the

amount provided in the payment schedule referenced in 42 U.S.C. sections 1395k, 1395l, and 1395m and 42 C.F.R. sections 414.202, 414.210, 414.228, and 410.100, as applicable to this section.

II. In this section, "prosthetic device" means an artificial limb device to replace, in whole or in part, an arm or leg.

III. An insurer may require prior authorization for prosthetic devices in the same manner that prior authorization is required for any other covered benefit.

IV. Covered benefits are limited to the most appropriate, medically necessary model for normal activities of daily living that adequately meets the medical needs of the patient as determined by the insured's treating physician. In this paragraph, "normal activities of daily living" means those activities performed on a regular basis for work and in the home but does not include participation in high risk activities such as sky diving, extreme sports, or professional or competitive sports activities, including marathon running, triathlons, and Para Olympics.

V. An insurer may require that, if coverage is provided through a managed care plan, the benefits mandated pursuant to this section shall be covered benefits only if the prosthetic devices are provided by a vendor and prosthetic services are rendered by a provider who contracts with or is designated by the insurer, to the extent that an insurer provides in-network and out-of-network services, the coverage for the prosthetic device shall be offered no less extensively.

VI. The provisions of this section shall apply to group health service plan contracts issued pursuant to RSA 420-A, and to health maintenance organization policies and plans issued pursuant to RSA 420-B.

2 New Section; Individual Insurance; Coverage for Certain Prosthetic Devices. Amend RSA 415 by inserting after section 6-i the following new section:

415:6-j Coverage for Certain Prosthetic Devices.

I. Each insurer that issues or renews any individual policy of accident or health insurance providing benefits for medical or hospital expenses, shall provide to certificate holders of such insurance who are residents of this state, coverage for the provision of benefits for prosthetic devices that equal those benefits provided for under federal laws for health insurance for the aged and disabled pursuant to 42 U.S.C. sections 1395k, 1395l, and 1395m and 42 C.F.R. sections 414.202, 414.210, 414.228, and 410.100, as applicable to this section. The reimbursement rate for prosthetic devices under this section shall be no less or greater than the amount provided in the payment schedule referenced in 42 U.S.C. sections 1395k, 1395l, and 1395m and 42 C.F.R. sections 414.202, 414.210, 414.228, and 410.100, as applicable to this section.

II. In this section, "prosthetic device" means an artificial limb device to replace, in whole or in part, an arm or leg.

III. An insurer may require prior authorization for prosthetic devices in the same manner that prior authorization is required for any other covered benefit.

IV. Covered benefits are limited to the most appropriate, medically necessary model for normal activities of daily living that adequately meets the medical needs of the patient as determined by the insured's treating physician. In this paragraph, "normal activities of daily living" means those activities performed on a regular basis for work and in the home but does not include participation in high risk activities such as sky diving, extreme sports, or professional or competitive sports activities, including marathon running, triathlons, and Para Olympics.

V. An insurer may require that, if coverage is provided through a managed care plan, the benefits mandated pursuant to this section shall be covered benefits only if the prosthetic devices are provided by a vendor and prosthetic services are rendered by a provider who contracts with or is designated by the insurer, to the extent that an insurer provides in-network and out-of-network services, the coverage for the prosthetic device shall be offered no less extensively.

3 Effective Date. This act shall take effect January 1, 2004.

SENATOR MARTEL: Thank you Mr. President. I move that SB 152 ought to pass as unanimously recommended by the Insurance Committee. Passage of this bill will help to resolve a serious issue facing a segment of our state population, who suffer accidents resulting in the need for a prosthetic device. Many accident victims in New Hampshire eventually need prosthetic devices in order to return to a somewhat normal lifestyle. However, many of these victims suffer from inadequate health insurance, which places a tremendous financial burden on them and their family when they try to acquire the necessary devices. This bill will help to ensure that these victims are not forgotten by the state or insurance industry. A compromise was reached by all interested parties, including both the top insurance carriers in our state and the committee members. With this amendment, the committee and the insurance industry both feel that this legislation is the answer that everyone is looking for. We recommend this bill ought to pass and I encourage the full Senate to do so. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 158**, adding a county commissioner member to the New Hampshire retirement system board of trustees. Insurance Committee. Inexpedient to legislate, Vote 4-0. Senator Prescott for the committee.

SENATOR PRESCOTT: Thank you Mr. President. I move that SB 158 be inexpedient to legislate as recommended by the Insurance Committee. The committee believes that this bill is unnecessary because it doesn't really correct any existing problem. If passed, this bill would place a representative from the county commissions on the New Hampshire Retirement System Board of Trustees. However, the employees of each of the counties are already adequately represented on the board by their Senators and their Representatives. If the county commissioners are concerned about issues at any time, they are welcomed to bring those concerns to the board as it is a public board. They are also welcomed to attend the public hearings and meetings to voice concerns and opinions. For these reasons, the committee unanimously recommends that this bill be voted inexpedient to legislate. Thank you Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**SB 183-FN**, relative to membership in the retirement system for part-time attorneys general. Insurance Committee. Inexpedient to legislate, Vote 4-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. I move that SB 183 be voted inexpedient to legislate as recommended by the Insurance Committee. Senator Clegg, the prime sponsor

of this bill, has told the committee that the issue this bill addresses has already been resolved without any legislative oversight. As a result, Senator Clegg has asked the committee to recommend that this bill be inexpedient to legislate and we are happy to oblige. Thank you Mr. President.

### **Committee report of inexpedient to legislate is adopted.**

**SB 223-FN-A**, relative to fees for copies of motor vehicle records and relative to the fire standards and training and emergency medical services fund. Insurance Committee. Ought to pass, Vote 4-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you Mr. President. I move that SB 223 ought to pass as recommended by the Insurance Committee. This bill was initiated by the Department of Safety, and has bipartisan support both in the House and in the Senate. If passed, this bill would authorize use of the EMS Fund to pay the expenses of administration for the Division of Fire Safety and Emergency Management. The bill also increases the fee charged for copies of motor vehicle records by one dollar to help raise the needed funds for the department. This bill has already been figured into Governor Benson's budget, as testified to by Senator Clegg in the committee hearing. Based on this, the committee recommends that this bill ought to pass. Thank you Mr. President.

### **Adopted.**

### **Ordered to third reading.**

**SB 36-FN**, relative to driving under the influence of a controlled drug and relative to protective custody of a person impaired by drugs. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

### **Senate Judiciary**

**March 6, 2003**

**2003-0564s**

**03/01**

### **Amendment to SB 36-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to protective custody of a person impaired by drugs and establishing a committee to study the issue of the applicability of the administrative license suspension laws to driving while under the influence of controlled drugs and ways to address the speed with which such cases are adjudicated in the district court.

Amend the bill by replacing all after the enacting clause with the following:

1 Place of Commitment; Expense of Protective Custody. Amend RSA 30-B:15, III to read as follows:

III. The expense of lodging persons in a county correctional facility under the protective custody of a peace officer under **RSA 172:15 or** RSA 172-B:3 shall be a charge upon the county.

2 New Paragraphs; Study, Treatment, and Care of Inebriates; Definitions. Amend RSA 172:1 by inserting after paragraph XXV the following new paragraphs:

XXVI. "Incapacitated" means that a person as a result of his or her use of drugs is in a state of intoxication, or mental confusion resulting from withdrawal, such that:

(a) He or she appears to need medical care or supervision by approved drug treatment personnel to assure his or her safety; or

(b) He or she appears to present a direct active or passive threat to the safety of others.

XXVII. "Intoxicated" means a condition in which the mental or physical functioning of an individual is substantially impaired as a result of the presence of drugs in his or her system.

XXVIII. "Protective custody" means a civil status in which an incapacitated person is detained by a peace officer for the purposes of:

(a) Assuring the safety of the individual or the public or both; and

(b) Assisting the individual to return to a functional condition.

XXIX. "Designated drug counselor" means a person approved by the commissioner to evaluate and treat drug users and drug abusers. A "designated drug counselor" may be, but is not required to be, a certified alcohol and drug abuse counselor.

3 New Section; Study, Treatment, and Care of Inebriates; Treatment and Services. Amend RSA 172 by inserting after section 14 the following new section:

172:15 Treatment and Services.

I. When a peace officer encounters a person who, in the judgment of the officer, is intoxicated as defined in RSA 172:1, XXVII, the officer may take such person into protective custody and shall take whichever of the following actions is, in the judgment of the officer, the most appropriate to ensure the safety and welfare of the public, the individual, or both:

(a) Assist the person, if the person consents, to his or her home, an approved drug treatment program, or some other appropriate location; or

(b) Release the person to some other person assuming responsibility for the intoxicated person; or

(c) Lodge the person in a local jail or county correctional facility for said person's protection, for up to 24 hours or until the keeper of said jail or facility judges the person to be no longer intoxicated.

II. When a peace officer encounters a person who, in the judgment of the officer, is incapacitated as defined in RSA 172:1, XXVI, the officer may take such person into protective custody and shall take whichever of the following actions is, in the judgment of the officer, the most appropriate to ensure the safety and welfare of the public, the individual, or both:

(a) Transport the person to an approved drug treatment program with detoxification capabilities or to the emergency room of a licensed general hospital for treatment, except that if a designated drug counselor exists in the vicinity and is available, the person may be released to the counselor at any location mutually agreeable between the officer and the counselor. The period of protective custody shall end when the person is released to a designated drug counselor, a clinical staff person of an approved drug treatment program with detoxification capabilities, or a professional medical staff person at a licensed general hospital emergency room. The person may be released to his or her own devices if at any time the officer judges the person to be no longer incapacitated. Protective custody shall in no event exceed 24 hours.

(b) Lodge the person in protective custody in a local jail or county correctional facility for up to 24 hours, or until judged by the keeper of the facility to be no longer incapacitated, or until a designated drug counselor has arranged transportation for the person to an approved drug treatment program with detoxification capabilities or to the emergency room of a licensed general hospital.

III. No person shall be lodged in a local jail or county correctional facility under paragraph II unless the person in charge of the facility, immediately upon lodging said person in protective custody, contacts a designated drug counselor, a clinical staff person of an approved drug treatment program with detoxification capabilities or a professional medical staff person at a licensed general hospital emergency room to determine whether said person is indeed incapacitated. If, and only if none of the foregoing is available, such a medical or clinical determination shall be made by a registered nurse or registered emergency medical technician on the staff of the detention facility.

IV. No local jail or county correctional facility shall refuse to admit an intoxicated or incapacitated person in protective custody whose admission is requested by a peace officer, in compliance with the conditions of this section.

V. Notwithstanding any other provisions of law, whenever a person under 18 years of age who is judged by a peace officer to be intoxicated or incapacitated and who has not been charged with a crime is taken into protective custody, the person's parent or guardian shall be immediately notified and such person may be held at a police station or a local jail or a county correctional facility in a room or ward separate from any adult or any person charged with juvenile delinquency until the arrival of his or her parent or guardian. If such person has no parent or guardian in the area, arrangements shall be made to house him or her according to the provisions of RSA 169-D:17.

VI. If an incapacitated person in protective custody is lodged in a local jail or county correctional facility his or her family or next of kin shall be notified as promptly as possible. If the person requests that there be no notification, the person's request shall be respected.

VII. A taking into protective custody under this section is not an arrest, however nothing in this section shall be construed so as to prevent an officer or jailer from obtaining proper identification from a person taken into protective custody or from conducting a search of such person to reduce the likelihood of injury to the officer or jailer, the person taken into protective custody, or others. No unnecessary or unreasonable force or means of restraint may be used in detaining any person taken into protective custody.

VIII. Peace officers or persons responsible for supervision in a local jail or designated drug counselors who act under the authority of this section are acting in the course of their official duty and are not criminally or civilly liable therefor, unless for gross negligence or willful or wanton injury.

#### 4 Study Committee Established.

I. The general court finds that there is a need to swiftly and promptly remove drug impaired operators from the roadway and that the Administrative License Suspension Act has proven to be a successful and effective tool in saving lives. The general court further finds that speedy adjudication of impaired driving cases in the district court likewise saves lives. The general court is encouraged with the Drug Recognition Enforcement program, derived from standards adopted by the National Highway Safety Administration and the International Chiefs of Police, as well as with the fact that this state has a number of DRE officers that are highly trained to identify symptoms of drug impairment. Currently, however, the administrative license suspension law is inapplicable in cases where a test result reveals the presence of a controlled drug, which is the cause of the operator impairment. Although the individual arrested will still face the

consequences of a criminal trial, there is a need to include the administrative consequences as well, which have proven to save lives. The general court, however, recognizes that there are current limitations in the testing of drug impaired drivers and that these limitations need to be explored in greater detail, in order to provide a mechanism for the scope of these hearings under RSA 265:91.

II. There is established a committee to study the issue of the applicability of the administrative license suspension laws to driving while under the influence of controlled drugs and ways to address the speed with which such cases are adjudicated in the district court.

III.(a) The members of the committee shall be as follows:

(1) Three members of the senate, appointed by the president of the senate.

(2) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

IV.(a) The committee shall study the issue of including within the administrative license suspension laws cases where a chemical test was requested under the implied consent law and the operator was found to be impaired by controlled drugs. The committee shall also study ways to address the speed with which such cases are adjudicated in the district court and the current methods available to test operators for controlled drug impairment.

(b) The committee shall seek testimony from:

(1) The commissioner of safety, or designee.

(2) The director of police standards and training.

(3) A representative from the New Hampshire bar that practices criminal defense.

(4) A representative from the New Hampshire Association of Chiefs of Police.

(5) The coordinator of highway safety.

(6) The commissioner of health and human services, or designee.

V. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

VI. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2003.

5 Effective Date.

I. Sections 1-3 of this act shall take effect January 1, 2004.

II. The remainder of this act shall take effect upon its passage.

**2003-0564s**

## AMENDED ANALYSIS

This bill:

I. Permits a peace officer to take a person who is impaired by drugs into protective custody.

II. Establishes a committee to study the issue of the applicability of the administrative license suspension laws to driving while under the influence of controlled drugs and ways to address the speed with which such cases are adjudicated in the district court.

SENATOR CLEGG: Thank you Mr. President. I move SB 36 ought to pass with amendment. Senate Bill 36 permits a police officer to take a person who is impaired by drugs into protective custody. Testimony received at the hearing spoke to the problem being faced by law enforcement from people impaired by drugs. Currently police officers cannot take these people into protective custody as current statute provides this only for those under the influence of alcohol. Police Standards and Training has now trained officers in Drug Recognition Evaluation (DRE) so that these law enforcement officers can recognize the different forms of impairment. The committee amendment also establishes a committee to study the issue of including within the administrative license suspension laws cases where a chemical test was requested under the implied consent law and the operator was found to be impaired by controlled drugs. The Judiciary Committee recommends that SB 36 be adopted as amended. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 40**, relative to filing of complaints for violation-level offenses. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

**Senate Judiciary**

**March 6, 2003**

**2003-0587s**

**04/10**

### **Amendment to SB 40**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to filing of complaints for violation-level offenses and making the electronic submission of a false statement chargeable as unsworn falsification.

Amend the bill by replacing all after the enacting clause with the following:

1 Jurisdiction and Procedure; Complaints; Filings for Violation-Level Offenses. Amend RSA 592-A:7 to read as follows:

592-A:7 Complaints. Criminal proceedings before a district ~~or municipal~~ court shall be begun by complaint, signed and under oath, addressed to such court, briefly setting forth, by name or description, the party accused and the offense ~~[with which he is]~~ charged, ***provided that a complaint filed by a police officer, as defined in RSA 188-F:23, 1, for a violation-level offense shall not require a signature or an oath, and provided that any statements made in such complaint shall be made under penalty of perjury.***

2 Unsworn Falsification; Electronic Filings Added. Amend RSA 641:3 to read as follows:

641:3 Unsworn Falsification. A person is guilty of a misdemeanor if:

I. He ***or she*** makes a written ***or electronic*** false statement which he ***or she*** does not believe to be true, on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein are punishable; or

II. With a purpose to deceive a public servant in the performance of his ***or her*** official function, he ***or she***:



(a) Makes any written *or electronic* false statement which he *or she* does not believe to be true; or

(b) Knowingly creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or

(c) Submits or invites reliance on any writing which he *or she* knows to be lacking in authenticity; or

(d) Submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he *or she* knows to be false.

III. No person shall be guilty under this section if he *or she* retracts the falsification before it becomes manifest that the falsification was or would be exposed.

3 Effective Date. This act shall take effect upon its passage.

**2003-0587s**

### AMENDED ANALYSIS

This bill allows for the filing of complaints for violation-level offenses without a police officer's signature or oath and provides that electronic submission of a false statement shall be charged as unsworn falsification.

SENATOR CLEGG: Thank you Mr. President. I move SB 40 ought to pass with amendment. The bill allows for the filing of complaints for violation-level offenses without a police officer's signature or oath. The provisions of this legislation enable the Department of Safety to move towards the transmission of electronic ticketing. The amendment adds language stating that the officer's information contained in the complaint is made under the penalty of perjury. The Judiciary Committee asks your support on SB 40 as amended. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 59-FN**, relative to administrative license suspension hearings. Judiciary Committee. Ought to pass with amendment, Vote 4-1. Senator Clegg for the committee.

**Senate Judiciary**

**March 6, 2003**

**2003-0506s**

**03/01**

### Amendment to SB 59-FN

Amend the bill by replacing section 1 with the following:

1 Administrative Review and Hearings; Conduct of Hearings. RSA 265:91-b, I(c) is repealed and reenacted to read as follows:

(c) If the request is for a hearing, the law enforcement officer's physical presence shall not be required unless the request also indicates that the person desires to have the law enforcement officer present and explains the reasons therefor. If the person requests the law enforcement officer's presence, the hearing examiner shall order the presence of the officer if the examiner determines that reasons asserted indicate that the presence of the law enforcement officer would be helpful to the examiner. The hearing shall be held within 20 days after the filing of the request unless the person requests a continuance. A request for a continuance by the person shall not stay the order of suspension or revoca-

tion. The hearing shall be recorded, and be conducted by the department's designated agent. Except as otherwise provided in this subparagraph, the hearing shall be conducted telephonically. If the person and the law enforcement officer so agree, the hearing may be conducted upon a review of the law enforcement officer's report. If the person requesting the hearing fails to appear without good cause shown, the right to a hearing shall be waived and the order sustained. If the hearing examiner orders the presence of the law enforcement officer, and the officer fails to appear without good cause shown, the case shall be dismissed and the order rescinded. The director may adopt rules relative to telephonic hearings conducted pursuant to this subparagraph.

**2003-0506s**

#### AMENDED ANALYSIS

This bill requires that administrative license suspension hearing be conducted telephonically unless the hearing examiner orders the presence of the law enforcement officer or the parties agree to a hearing conducted upon a review of the law enforcement officer's report.

SENATOR CLEGG: Thank you Mr. President. I move that SB 59-FN ought to pass with amendment. The bill eliminates the requirement that a law enforcement officer appear at the administrative license suspension hearing and also permits ALS hearings to be held by telephone or other electronic means. The committee amendment provides that the law enforcement officer's presence can be required by the hearings officer if it is requested by either party and determined that the officer's presence would be helpful. The amendment further determines that if the accused and the officer both agree, the hearing may be conducted on the officer's report. The Judiciary Committee recommends that SB 59-FN be adopted as amended. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 219**, relative to superior court notice to health care regulatory boards of felony convictions of health care providers. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Peterson for the committee.

**Senate Judiciary**

**March 6, 2003**

**2003-0572s**

**05/09**

#### Amendment to SB 219

Amend RSA 499:10-a as inserted by section 1 of the bill by replacing it with the following:

499:10-a Notice to Health Care Regulatory Boards. Every clerk of the superior court shall, upon the felony conviction of any person licensed or registered as a health care provider in the state of New Hampshire, notify the appropriate health care regulatory board of such conviction. *The clerk's duty under this section shall be limited to those instances where the clerk reasonably believes or knows that the person is a licensed health care provider.*

SENATOR PETERSON: Thank you Mr. President. I move SB 219 ought to pass as amended. Senate Bill 219 limits the Superior Court clerk's notice obligation to those regulatory boards that the clerk reasonably believes license or regulate the convicted healthcare provider. Because a court clerk often has no way of knowing the profession of a convicted felon, they requested this clarifying language. The committee amendment further clarifies that the clerk's duty shall be limited to those instances where the clerk reasonably believes or knows that a person is a licensed healthcare provider. The Judiciary Committee recommends that SB 219 be adopted as amended. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 220**, repealing the professional malpractice claims panel. Judiciary Committee. Rerefer to committee, Vote 5-0. Senator Peterson for the committee.

SENATOR PETERSON: Thank you Mr. President. I move that SB 220 be referred to committee. Senate Bill 220 would repeal RSA 519-A which established professional malpractice claims panels and allows litigants to obtain informal, nonbinding decisions before bringing suit. These panels, while used infrequently, require three persons: A layperson, a professional such as a physician or an attorney and a judge. Currently in the Superior Courts, all cases filed as a writ must go through the Alternative Dispute Resolution process. Also, Representative Mock has a study committee looking into these matters. The Judiciary Committee recommends that SB 220 be rereferred to committee until Representative Mock's committee has completed their work and issued their recommendations. Thank you.

**Committee report of rerefer is adopted.**

**SB 98-FN**, prohibiting telemarketers from contacting customers on a federal do-not-call registry. Public Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Green for the committee.

**Public Affairs**

**March 5, 2003**

**2003-0535s**

**05/10**

### **Amendment to SB 98-FN**

Amend the bill by replacing all after the enacting clause with the following:

1 Use of Automatic Telephone Dialing Systems; Chapter Heading Amended. Amend the chapter heading of RSA 359-E to read as follows:

#### **CHAPTER 359-E**

~~[USE OF AUTOMATIC TELEPHONE DIALING SYSTEMS AND  
CALLER IDENTIFICATION SERVICES]~~

#### **TELEMARKETING**

2 New Subdivision Heading; Use of Automatic Telephone Dialing Systems and Caller Identification Services. Amend RSA 359-E by inserting, preceding RSA 359-E:1, the following subdivision heading:

Use of Automatic Telephone Dialing Systems and  
Caller Identification Services

3 New Subdivision; Telemarketing Sales Calls. Amend RSA 359-E by inserting after section 6 the following new subdivision:

Telemarketing Sales Calls

359-E:7 Definitions. In this subdivision:

I. "Bureau" means the consumer protection bureau of the office of the attorney general.

II. "Customer" means any natural person who is a resident of this state and who is or may be required to pay for or to exchange consideration for goods and services offered through telemarketing.

III. "Do-not-call list" means a list of residential telephone subscribers who have notified the list administrator of their desire not to receive telemarketing sales calls.

IV. "Doing business in this state" means conducting telephonic sales calls from a location:

(a) In this state; or

(b) Outside of this state to consumers residing in this state.

V. "Established business relationship" means an established business relationship as defined by the Federal Trade Commission Telemarketing Sales Rule, 68 Fed. Reg. 19,4669 (2003) (to be codified at 16 C.F.R. part 310, section 310.2(n)), as amended.

VI. "Goods and services" means any goods and services, and shall include any real property or any tangible personal property as well as time share estates and licenses or services of any kind.

VII. "List administrator" means the Federal Trade Commission or other federal agency, or, if necessary, the Direct Marketing Association, Inc., Farmingdale, New York, or its successor organization, designated by contract entered into by the department of justice that accepts individual names, addresses, and telephone numbers of customers who do not wish to receive telemarketing sales calls.

VIII. "Person" means any natural person, association, partnership, firm, corporation and its affiliates or subsidiaries or other business entity.

IX. "Telemarketer" means any person who, for financial profit or commercial purposes in connection with telemarketing, makes telemarketing sales calls to a customer when the customer is in this state or any person who directly controls or supervises the conduct of a telemarketer or causes to be made a telemarketing call on such seller's own behalf or through a salesperson. For the purposes of this subdivision, "commercial purposes" shall mean the sale or offer for sale of goods or services.

X. "Telemarketing" means any plan, program, or campaign which is conducted to induce payment or the exchange of any other consideration for any goods or services by use of one or more telephones and which involves more than one telephone call by a telemarketer in which the customer is located within the state at the time of the call. Telemarketing shall not include the solicitation of sales through media other than by telephone calls.

XI. "Telemarketing sales call" means a telephone call made by a telemarketer to a customer for the purpose of inducing payment or the exchange of any other consideration for any goods or services or for the purpose of soliciting an extension of credit for consumer goods or services, or for the purpose of obtaining information that may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes. A telemarketing sales call shall not include a call made:

(a) In response to an express written or verbal request of the customer called.

(b) In connection with an existing business relationship.

(c) In which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller.

(d) On behalf of a nonprofit charity.

(e) On behalf of a newspaper to build its own circulation, provided that the telemarketer making such call has used and observed with respect to such call the do-not-call list maintained by the Telephone Preference Service of the Direct Marketing Association, Inc., Farmingdale, New York, or its successor organization.

(f) On behalf of a political campaign, except that a call made by or on behalf of a political campaign using automatic dialing equipment shall be deemed a telemarketing sales call under this chapter.

359-E:8 Prohibited Telemarketing Sales Calls. Telemarketers are prohibited from conducting telemarketing sales calls to any customer who has registered his or her name or telephone number with the do-not-call registry maintained by the list administrator or Federal Trade Commission. In the case of telemarketers regulated by the Federal Communications Commission, this chapter shall apply in a manner consistent with rules concerning a national do-not-call list developed by that agency.

359-E:9 Telemarketers' Obligation to Obtain Do-Not-Call List. Telemarketers making telemarketing sales calls to customers in the state of New Hampshire shall obtain from the list administrator quarterly listings of customers in the state who have registered with the list administrator for inclusion in its do-not-call list.

359-E:10 State Do-Not-Call List. If the Federal Trade Commission or other federal agency has not established a national do-not-call registry prior to January 1, 2004, the department of justice shall contract with the Telephone Preference Service of the Direct Marketing Association, Inc., Farmingdale, New York, or its successor organization to establish and maintain, as the list administrator, a state do-not-call list for New Hampshire. The department's obligation to contract with the Direct Marketing Association or its successor to establish and maintain a do-not-call list shall remain in effect until such time as a national registry is established.

359-E:11 Duties of List Administrator. The list administrator:

I. Shall provide the bureau with a copy of each quarterly do-not-call list.

II. Shall provide the bureau with the names and addresses of each telemarketer who purchases the do-not-call list.

III. Except as directed by the bureau, shall be prohibited from disclosing or using in any way customer names, addresses, or telephone numbers obtained in the course of registering customers' telephone numbers on the do-not-call list.

359-E:12 Violations; Penalties.

I. The department of justice shall investigate any complaints received concerning violations of this subdivision. If, after investigating the complaint, the department finds that a person has violated any provision of this subdivision, the department shall impose a civil penalty of \$2,000 for each violation.

II. Notwithstanding paragraph I, a telemarketer shall not be held liable for violating this subdivision if the telemarketer can demonstrate by clear and convincing evidence that, as part of the telemarketer's routine business practice:

(a) The telemarketer established and implemented written procedures to comply with this subdivision.

(b) The telemarketer trained his or her personnel in the requirements of this subdivision.

(c) The telemarketer uses a process to prevent telemarketing to any telephone number on any do-not-call list or registry referenced in this subdivision; maintains the current, quarterly version of the list or registry; and maintains records documenting this process.

(d) The telemarketer monitors and enforces compliance with the procedures established under subparagraph (a).

(e) Any subsequent call otherwise violating this subdivision is not part of a pattern of calls made in violation of this subdivision and is the result of a good faith error.

4 Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.

5 Effective Date. This act shall take effect 60 days after its passage.

**2003-0535s**

#### AMENDED ANALYSIS

This bill prohibits telemarketers from calling customers who have placed their names on a federal do-not-call registry or, until a federal registry is available, a state do-not-call list maintained by the Direct Marketing Association. The bill includes certain exemptions from the do-not-call requirements and establishes civil penalties for telemarketers' noncompliance.

SENATOR GREEN: Thank you Mr. President. I move SB 98 ought to pass as amended. Senate Bill 98 will allow New Hampshire to take advantage of the federal do-not-call registry and prohibit telemarketers from calling customers that do not wish to be solicited. There will be no charge to the state or consumer to sign up on the list and registration will be done on a voluntary basis over the phone or online. The Federal Trade Commission expects the system to be up and running by this summer. Senate Bill 98's amendment will make two significant changes: First, it will exempt newspapers. The committee heard from a number of local newspapers saying that 40 percent of their new readership comes from telemarketing and their alternatives are far too expensive. Second, the amendment prohibits automated political calls and messages. This does not include person-to-person calls. I move SB 98 ought to pass as amended and ask your support. Thank you. I also would like to mention to the chair that there will be a follow-up amendment, which will just correct some wording.

SENATOR BELOW: Senator Green, I think that you just said that it prohibits the auto-dialed political calls, but doesn't it in fact, include them in the definition of a telemarketing sales call, which would be calls that shouldn't be made to people on the do-not-call list? I wouldn't prohibit it from someone who is not on the do-not-call list.

SENATOR GREEN: That is correct. They have to get on the do-not-call list. That is what they have to do in order to be registered and the situation will be that they will not get the calls if they are on the list.

SENATOR BELOW: Okay. Thank you.

SENATOR GREEN: You are welcome.

SENATOR ESTABROOK: Thank you Mr. President. I rise to thank Senator Green, Senator Roberge and the members of the Public Affairs Committee for the attention they have given this bill. I also want to thank Senator Peterson for providing leadership on this bill with me and our other cosponsors for their support. Over 85 percent of New Hampshire's citizens support state do-not-call legislation. They want an end to unsolicited interruptions into their homes using a service that they are paying for. We heard from consumers who are tired of interruptions, not just to their dinner but to their sleep, as third-shift workers. Our constituents feel this problem has grown from one of annoyance to one more closely described as harassment. New Hampshire's citizens want control over potentially fraudulent calls, many targeted at seniors. We heard from seniors, adult children of seniors and families. Families angry over attempts to have them provide credit card information to help them manage credit card debt that they don't have. We are wise to be acting now, to prepare New Hampshire for implementation of the federal FTC do-not-call program later this year. We have collectively crafted an excellent bill which will provide expanded protections beyond the federal program at the same time it takes advantage of the federal list to make participation simple and expenditures by the state unnecessary. The New Hampshire Attorney General's Office, the Consumer Protection Bureau will make enforcement of this law a priority. What a deal. Increased consumer protection at no cost. The committees recommendation merits support.

SENATOR BARNES: Thank you Mr. President. I also want to echo my thanks to Senator Green, adding the political exemption in there was very important because I don't think that we should be up here saying that it is okay for us to do something and for someone else not to do something. So the old saying, "What is good for the goose is good for the gander". I think that applies here and I think that it was taken care of very well.

SENATOR PETERSON: Thank you Mr. President. I would like to add my thanks to those on the committee. A particular thanks to Senator Estabrook for her good work on this bill and to Senator Green for all of his work, along with Senator Barnes who got together and I think, improved this bill significantly as it went through the process. It is clear to many of us that there is a different level of intrusion into personal time, into family time, with an unsolicited phone call in your home than there is when you get something in the mail or through some other form. This will give New Hampshire residents a reasonable assurance that if they go on the list, they will be able to limit the number of these calls that are coming into their home. So I add my gratitude to the list of others who spoke and urge the Senate to pass this bill which the committee has done a very good job with. Thank you Mr. President.

SENATOR LARSEN: I, too, rise to support this bill. We have worked on this issue for a good many years and it seems that this is the year that it is going to happen. This bill is a victory for the consumers of the state, for the older people of this state who oftentimes have the hardest time hanging up on these telemarketing calls. It is a victory for all of us who believe that when you buy a product, you have a right to privacy in your own home. There was an interesting analogy in the Public Affairs committee hearing on this. Someone said you know when you go buy a new car, you don't expect to have someone sitting in the seat next to you saying "and by the way, don't you think that you should be buying a new muffler"? So all of those...you are buying a product when you buy tele-

phone services and it shouldn't come with additional advertising regularly into your house. If you don't want it, you ought to be able to get off that list. So this is a good step forward and I commend the sponsor for her work on this.

**Question is on the adoption of the committee amendment.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Clegg.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Below, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Larsen, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Estabrook, Morse, Prescott, Cohen.**

**The following Senators voted No:**

**Yeas: 22 - Nays: 0**

Senator Foster Rule #42.

**Amendment adopted.**

Senator Green offered a floor amendment.

Sen. Green, Dist. 6

**March 12, 2003**

**2003-0651s**

**05/10**

### **Floor Amendment to SB 98-FN**

Amend RSA 359-E:7, XI(b) as inserted by section 3 of the bill by replacing it with the following:

(b) In connection with an established business relationship.

Amend RSA 359-E:12, II as inserted by section 3 of the bill by replacing it with the following:

II. Notwithstanding paragraph I, a telemarketer shall not be held liable for violating this subdivision if the telemarketer can demonstrate by clear and convincing evidence that, as part of the telemarketer's routine business practice:

(a) The telemarketer established and implemented written procedures to comply with this subdivision.

(b) The telemarketer trained his or her personnel in the requirements of this subdivision.

(c) The telemarketer uses a process to prevent telemarketing to any telephone number on any do-not-call list or registry referenced in this subdivision; maintains the current, quarterly version of the list or registry; and maintains records documenting this process.

(d) The telemarketer monitors and enforces compliance with the procedures established under subparagraph (a).

(e) The telemarketer uses a version of the do-not-call list obtained no more than 3 months prior to the date that any call is made.

(f) Any subsequent call otherwise violating this subdivision is not part of a pattern of calls made in violation of this subdivision and is the result of a good faith error.

SENATOR GREEN: Thank you Mr. President. I rise to offer a floor amendment. This amendment is the result of proofreading the amendment...the amendment that we just voted on. So I am going to ask you to help me make some technical corrections. They are not difficult to find. If you will go to the amendment, on page 12 of your calendar, you will find where



I am at. At the bottom of the page it is XI. There are some small letters at the bottom, a, b, c, d, and e. I will wait until you get the actual amendment so that you will know what I am saying. I just want to get you to the right location of the amendment and to the word change that we are making. On the small letter "b", bottom of page 12, XI. Are we all there? The small letter "b". We are changing from "existing" to "established". That is the only change in that...that goes with the language as it is supposed to define what we are trying to do. The second part of it is on page 13 of the amendment that we just approved. If you go down to II, "notwithstanding paragraph I" is how it starts. You will see some small letters there also. If you look at the amendment, what happens is there is a new "e" in my new amendment which says that "a telemarketer using a version of the do-not-call list obtained no more than three months prior to the date that any call is made". That was supposed to be in the original language in my amendment. It just got omitted in the drafting. Then "e" becomes "f". So you can see that we just moved "f" down. Those are the only changes that I am asking you to make as corrections so that the bill will be as it was originally intended. Thank you.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 112-FN-L**, relative to state use of domestic steel. Public Affairs Committee. Inexpedient to legislate, Vote 3-2. Senator Morse for the committee.

SENATOR MORSE: Thank you Mr. President. I move SB 112 inexpedient to legislate and I ask this body to vote against the ITL so that I may offer a motion of rerefer.

SENATOR JOHNSON: Thank you Mr. President. I rise to make a comment if I may. Having spent fifty years of my life in the steel business, like it or not, we do have a global economy and we do have NAFTA and I would say that when this bill is rereferred they might consider, in my opinion, there are many steel items which are not available domestically now and would have to be imported, that the state might be using, so I would just have a word of caution that is a strong possibility. Thank you.

**Committee report of inexpedient to legislate failed.**

**Senator Morse moved to rerefer.**

SENATOR MORSE: Thank you Mr. President. I move rerefer and would like to speak to my motion. We have spoken with the sponsors of this bill and we have spoken with the industry and the committee has decided that they would like to take this bill back. I would say that timing is everything, though. The Prime Minister of Canada did choose to speak out against America last week after we had voted on this bill, so I believe that the committee wants to work on the bill, but I would just suggest that America stands for something and I believe that we can send a message with that also. Thank you.

SENATOR COHEN: Yes, I would like to support the motion of rerefer. I think that what this bill is about is to state that the taxpayers of New Hampshire should not be subsidizing foreign jobs. This steel fabrication business is scattered throughout the state of New Hampshire. They are everywhere and they employ a lot of people. This is an important sec-

tor of our economy and I believe, certainly deserves a level playing field, at the very least, when it comes to state contracts, so I certainly support the rerefer motion. This bill ought to be continued to look at and come out with some positive results for the people of New Hampshire. Thank you.

**Adopted.**

**SB 112-FN-L is rereferred to committee.**

**SB 126-FN-A**, exempting certain transfers of title from the real estate transfer tax. Public Affairs Committee. Inexpedient to legislate, Vote 4-1. Senator Barnes for the committee.

SENATOR BARNES: Thank you Mr. President. You are going to have an echo here and the committee is going to ask you to do the same thing. Please vote down the inexpedient to legislate motion because we would like to rerefer this. Further information has come to the committee's attention and we would like it to come back to the committee so that we can look at it and work on it.

SENATOR SAPARETO: Thank you Mr. President. I rise in opposition to rerefer and request that it be recommitted. There is not very much information on this and it would require another years worth of time, it is just a matter of a proper fiscal note, so I think that a recommit would probably be more appropriate in this situation.

**Committee report of inexpedient to legislate failed.**

Senator Barnes moved to rerefer.

SENATOR BARNES: I rise to ask this body to rerefer this piece of legislation.

SENATOR LARSEN: I rise to substitute the motion of recommit. If you want to recess, I can understand that, too.

**Recess.**

**Out of recess.**

**Motion adopted.**

**SB 126-FN-A is rereferred to committee.**

**SB 139**, relative to exhibition fees charged by the boxing and wrestling commission. Public Affairs Committee. Ought to pass, Vote 4-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you Mr. President. I move SB 139 ought to pass. Senate Bill 139 will remove the Boxing and Wrestling Commission's boxing exhibition fees for nonprofit organizations and assist nonprofits in their fundraising efforts. The annual "Fight to Educate" boxing exhibition is an example of a nonprofit fundraising event that will be aided by SB 139. Last year's event benefited The Union Leader Santa Fund, The Hundred Club of New Hampshire, and The Bobby Stephen Fund for Education to Benefit Jobs for NH's graduates. The Public Affairs Committee voted 4-0 for the motion of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 143**, establishing a commission to study and review the regulation of the building trades. Public Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Larsen for the committee.

**Public Affairs**  
**March 6, 2003**  
**2003-0589s**  
**08/01**

### **Amendment to SB 143**

Amend the bill by replacing section 2 with the following:

2 Membership. The commission shall be composed of the state fire marshal and a representative appointed by each of the following organizations:

- I. New Hampshire Fire Chiefs Association.
- II. New Hampshire Municipal Association.
- III. Homebuilders and Remodeling Association of New Hampshire.
- IV. New Hampshire Association of Building and Remodeling Contractors.
- V. Associated General Contractors of New Hampshire.
- VI. New Hampshire Oil Heat Council.
- VII. New Hampshire Architects Association.
- VIII. New Hampshire Society of Professional Engineers.
- IX. New Hampshire Plumbing and Mechanical Contractors Association.
- X. Electrical Contractors Business Association.
- XI. New Hampshire Plumbing Board.
- XII. New Hampshire Building Officials Association.
- XIII. New Hampshire Building and Construction Trades Council.
- XIV. Association of Builders and Contractors.
- XV. New Hampshire Consumer Protection and Antitrust Bureau.

SENATOR LARSEN: Thank you Mr. President. I move SB 143 ought to pass with amendment. Senate Bill 143 will establish a Building Trades Commission to review the regulation of the building trades and study the feasibility of consolidating licensing and regulation under the authority of one agency. The Commission will be comprised of the State Fire Marshal and representatives of 12 building trade organizations, the Consumer Protection and Antitrust Bureau, and the NH Municipal Association. The Building Trades Commission will report its recommendations on or before November 1, 2004. The Public Affairs Committee voted 5-0 for the motion of ought to pass with amendment and asks for your support. I am also understanding that there may be a floor amendment which will follow, which, I think would be viewed as a friendly floor amendment. Thank you very much.

### **Amendment adopted.**

Senator Prescott offered a floor amendment.

Sen. Prescott, Dist. 23

**March 13, 2003**  
**2003-0671s**  
**03/04**

### **Floor Amendment to SB 143**

Amend section 2 of the bill by inserting after paragraph XV the following new paragraph:

- XVI. New Hampshire Manufactured Housing Association.

SENATOR PRESCOTT: Thank you Mr. President. I rise to offer a floor amendment to SB 143. The amendment is simple. It adds New Hampshire Manufactured Housing Association to the commission, reviewing the issue of regulating these building trades. This group represents both

manufactured and modular housing builders and retailers. Its members account for over 1,000 homes each year that are built in New Hampshire. I believe that they need to be at the table. The association's perspective will be helpful in the work of this commission. I urge your support. Thank you very much Mr. President.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 154**, relative to landlord access to rental properties. Public Affairs Committee. Ought to pass, Vote 4-1. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you Mr. President. I move SB 154 ought to pass. Senate Bill 154 grants landlord access to rental property for any reason. Current law only allows a landlord to enter a rental unit to make necessary repairs. The Public Affairs Committee heard testimony from a number of property owners citing cases where their tenants denied them access and caused serious damage to the premises, cost the landlord money to repair the damage, forced the landlord to go to court to gain access, and even put other tenants at risk by their questionable behavior. This bill will address these problems and more easily allow landlords to access their properties for routine insurance and fire safety inspections, to check on living arrangements and potential health violations, or to show the home to prospective tenants. The New Hampshire Association of Realtors and New Hampshire Property Owners Association are in full support of SB 154.

SENATOR LARSEN: You might notice that I was supposed to argue for this bill, although if you look closely, there was a vote against this bill in committee. That vote was me. I am the sole Democrat on that committee, but I am also opposing it because I believe that this bill seriously tips the balance that we currently have between landlords and tenants in this state. All of you have a great number of people, who because of whatever circumstances are, renting not owning. This bill tips the balance significantly. In fact, it throws over the whole bucket to those who own property in this state. What it does is, it basically...right now, current law says that a landlord can enter a rental property, with proper notice, if they are entering for purposes of repair. In most parts of the state, this hasn't been a problem, but apparently it has been read very literally by one part of our state. I believe that we in fact do need to modify the way that landlords are able to enter property, rental property in this state, because there are circumstances besides repair which a landlord might need to enter property. The problem is the way you have the bill recommended to you by committee. There are no restraints other than a notice. A landlord can enter for any reason if he gives notice. This is wrong. It violates the privacy protections of those who are renting property in this state. So what I proposed in committee, and I am going to propose to you again today, is for you to consider acknowledging that landlords need access, but that those landlords ought to have access for certain reasons. There are reasonable reasons like health and safety inspections. It is reasonable that a landlord may need access to an apartment to show code compliance if a code inspector comes through. They may need it for purposes of insurance appraisal, real estate rental or real estate sales requirements. But to broadly allow it for any pur-

pose, opens up all kinds of problems. I can point in my district, a call that I received from a renter who was concerned. She was in a very affordable rental apartment and those are very hard to come by. She was in that apartment and her landlord was visiting her daily. That landlord was sexually harassing her, but she was afraid to notify anyone **TAPE CHANGE** for fear of losing her affordable apartment. If she caused any problem, she was in a huge bind for losing what was a place for her and her three children. This cannot be that we open the doors of all rental units for any landlord for whatever reason. That is what you would be passing here today. I urge you to consider making reasonable limitations on the reasons for entering another persons private space and to look at the language which you will see in a floor amendment that I have prepared. If you would distribute that floor amendment at this time.

Senator Larsen offered a floor amendment.

**Sen. Larsen, Dist. 15**

**March 10, 2003**

**2003-0622s**

**08/09**

### **Floor Amendment to SB 154**

Amend the bill by replacing section 1 with the following:

1 Landlord and Tenants; Prohibited Practices. Amend RSA 540-A:3, V to read as follows:

V. No tenant shall willfully refuse the landlord access to the premises ~~[to make necessary repairs]~~ ***for the purposes of health and safety inspections, code compliance review, insurance appraisal, and real estate rental and sales requirements*** at a reasonable time after notice which is adequate under the circumstances.

**2003-0622s**

### **AMENDED ANALYSIS**

This bill grants a landlord access to rental property for certain reasons.

SENATOR LARSEN: The floor amendment simply says that it eliminates the current language and says that "No tenant shall willfully refuse the landlord access to the premises for the purposes of health and safety inspections, code compliance review, insurance appraisal, and real estate rental and sales requirements at a reasonable time after notice which is adequate under the circumstances." These are the issues that we heard from the landlords themselves, and realtors. Those were the people who came asking for this bill. These were the reasons they said that they needed access to another persons apartment. This is a reasonable amendment. I urge you to adopt floor amendment 622 and to consider the privacy rights of those who rent in this state. Thank you very much.

SENATOR BELOW: Thank you Mr. President. Senator Larsen, did you really intend to strike out "to make necessary repairs"? Shouldn't that also be a basis for needing access?

SENATOR LARSEN: That was meant to be included. It could be a floor amendment which we could correct, but I also thought that oftentimes, it is these other reasons that are the reasons for a repair.

SENATOR BELOW: In addition to making necessary repairs. Your intent was to have these other reasons?

SENATOR LARSEN: Yes.

SENATOR BELOW: Thank you.

SENATOR SAPARETO: Thank you Mr. President. There are numerous reasons why a landlord could wish to inspect the property. Right now we have a full blanket of being able to stop when even upon a reasonable request of time prior to that. Having been a landlord myself at times, I know that sometimes you have undesirable tenants that make it very difficult to maintain...not only to maintain property, but other aspects of the property, that can no way be included with a laundry list of reasons. We would be adding to this list for years to come as we find additional valid reasons in order for which an owner can inspect the property. I would support the bill as the committee recommends and vote down the floor amendment.

SENATOR ROBERGE: Thank you Mr. President. I agree with Senator Sapareto. I was going to rise to say the same thing. I would urge you to defeat the amendment. Thank you.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Larsen.**

### **PARLIAMENTARY INQUIRY**

SENATOR PRESCOTT: Mr. President, if I were to vote for this amendment, I would be voting that the landlord would not be able to enter a premises to make necessary repairs?

SENATOR EATON (In the Chair): If you are in favor of the amendment, you will vote yes. If you are not in favor of the amendment, you will vote no.

**Recess.**

**Out of recess.**

Senator Larsen withdrew her request for a roll call.

### **MOTION TO TABLE**

Senator Larsen moved to have **SB 154** laid on the table.

**A division was requested.**

**Yeas: 14 - Nays: 9**

**Adopted.**

### **LAIID ON THE TABLE**

**SB 154**, relative to landlord access to rental properties.

**Recess.**

**Out of recess.**

**SB 156**, relative to law enforcement officer's collective bargaining. Public Affairs Committee. Inexpedient to legislate, Vote 3-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you Mr. President. I move that **SB 156** be inexpedient to legislate. This bill would extend benefits derived from state police bargaining to other law enforcement officers within state government. The New Hampshire Troopers Association and the State Employees Association oppose **SB 156** because they feel that the current system is working well and their membership is happy. The committee feels that if the law enforcement officials are satisfied with their current benefits then there is no need for a change. Please join me in voting **SB 156** inexpedient to legislate. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 176**, relative to standards for plats recorded in the registry of deeds. Public Affairs Committee. Ought to pass, Vote 4-0. Senator Larsen for the committee.

**SENATOR LARSEN:** Thank you Mr. President. I move SB 176 ought to pass. Senate Bill 176 establishes specific standards for plats that are submitted for recording in the Registry of Deeds across the state. Some of the new standards will require plats to be prepared on a media of a specified size with legible text, and original certifications and seals. Registry offices will now have the opportunity to reject plans if they do not arrive in the appropriate form. Senate Bill 176 was sponsored at the request of the New Hampshire Land Surveyor Association and is supported by the New Hampshire Register of Deeds and Municipal Association. They feel that there is a cost-effective benefit for the client, public and register, to have clear and readable plat plans that can be reproduced and stored. The Public Affairs Committee recommends SB 176 ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 86-FN**, relative to disclosure of certain information about child fatalities and near fatalities resulting from abuse and neglect, and relative to accreditation of the department of health and human services by the Council on Accreditation for Children and Family Services. Public Institutions, Health and Human Services Committee. Ought to pass, Vote 3-0. Senator Martel for the committee.

**SENATOR MARTEL:** Thank you Mr. President. I move ought to pass on SB 86, which addresses the fact that even though New Hampshire has one of the best child abuse reporting laws, the system is not adequately responding to those reports. Senate bill 86 will require DCYF to meet standards for accreditation as established by the Council on Accreditation for Children and Family Services, an internationally recognized authority. Standards include mechanisms for quality improvement, adequate and appropriately trained staff and greater accountability to the public and elected officials. The bill also provides DCYF with resources to meet these requirements and includes third-party, systematic monitoring of progress toward accreditation. The committee unanimously urges the Senate to vote ought to pass. Thank you Mr. President.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 96-FN**, establishing a pharmacy assistance program for seniors and disabled persons. Public Institutions, Health and Human Services Committee. Rerefer to committee, Vote 4-0. Senator O'Hearn for the committee.

**SENATOR O'HEARN:** Thank you Mr. President. Upon agreement of the chairman of the committee and the prime sponsor, I am asking that at this time that we recommit the bill, SB 96.

Senator O'Hearn moved to recommit.

**Adopted.**

**SB 96-FN is recommitted to committee.**

**SB 47-FN**, relative to refunds for tolls paid on account of shrinkage or loss by evaporation of motor fuel. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Kenney for the committee.

## Senate Transportation

March 6, 2003

2003-0573s

03/09

## Amendment to SB 47-FN

Amend the bill by replacing section 1 with the following:

1 Road Tolls; Retail Dealers. Amend RSA 260:48 to read as follows:  
 260:48 Retail Dealers. In addition to the provisions of RSA 260:47, ~~any retail dealer shall be entitled to a refund for tolls paid on account of]~~ **upon submission of supporting documents that show the actual** shrinkage or loss by evaporation of motor fuel, **a retail dealer may be entitled to a refund on tolls paid.** The procedure for such refund shall be as follows:

I. The amount of refund shall be ~~computed at the rate of]~~ **limited to actual losses from shrinkage and evaporation up to 3/4 of** one percent of the toll paid on gross purchases.

II. All applications for refunds shall be made subject to prosecution for unsworn falsification and shall be made semi-annually within 90 days after June 30 and December 31, respectively.

III. The application shall be in such form as the commissioner shall prescribe and shall be accompanied by **supporting documentation that shows actual losses due to shrinkage and evaporation of motor fuel, including:**

(a) **Opening and closing inventory readings;**

(b) **Pump meter readings;**

(c) **Purchases of product during the stated period; and**

(d) A statement from the distributor of the gross purchases of motor fuel made by the dealer during the 6-month period.

IV. The above conditions having been fully complied with, the commissioner shall calculate the amount of the refund due on the application and shall certify that amount and the name of the person entitled to the refund to the state treasurer.

**V. Any retail dealer who has been denied a full or partial refund by the commissioner after a hearing at the department may, within 30 days of the date of the denial, appeal to the superior court of Merrimack county.**

SENATOR KENNEY: Thank you Mr. President. I move SB 47 ought to pass as amended. Senate Bill 47 modifies the eligibility and procedures for road toll refunds based on shrinkage or loss by evaporation. Currently New Hampshire is one of twenty-five states to provide special allowances for shrinkage and only one of five states to reimburse at a rate of one percent. Senate Bill 47 will reduce the road toll refunds from one percent to three-fourths of one percent. We believe the modified reimbursement rate is a reasonable change to keep up with technological improvements in the transfer of motor fuel. In addition, the refund reduction is expected to save money for the state and keep more of New Hampshire's citizens tax money going toward keeping the roads safe, not subsidizing retail dealers. The Transportation Committee recommends SB 47 ought to pass as amended. Thank you Mr. President.

## Amendment adopted.

SENATOR GATSAS: I rise in opposition to the legislation because I believe that we are affecting the small business owner. We are going after him for a quarter of a percent. We are making him show us and prove to us that his claim is authentic. We are talking about a \$250,000 difference



from the one percent to the three-quarters of a percent because the one percent is equal to a million. I think that it is wrong that we are going in there and telling the small businessman to sit down and do this paperwork, analyze what you have done, send it up to us and prove to us that you are entitled to the shrinkage. I think that there is a problem with that. I hope that the next thing that we go after is not the rooms and meals people that collect the tax, because they are getting a benefit. I hope that is not the next place that the state of New Hampshire is looking to recover money from the small business people. I think that it is important that we vote this legislation down because it is sending the wrong message to small business people that we are going to be looking for them for other reasons and that is wrong. Thank you Mr. President.

SENATOR CLEGG: Thank you Mr. President. I rise in support of the bill. We are not going after anyone. What we are saying is, you and I, when we go to the gas station, pay a gas tax. There used to be an assumption under the old technology that you had a loss of shrinkage due to evaporation. Well today, the industry itself says that if you are losing more than .5 then you better check for a leak and start digging up your tank, because you have an environmental problem. So what we did was we got together with the industry, the Department of Safety and came up with something that both sides thought was reasonable. We are not taking anything away from anybody. Everybody still gets what they deserve. They still get to claim their shrinkage, and the state of New Hampshire gets the tax that it taxes you and I, not the dealers. Thank you Mr. President.

SENATOR LARSEN: Senator Clegg, when I read this, the current law permits the refund to be one percent of the toll. The change says that the refund is limited to actual losses. Does that then require additional documentation of losses and more paperwork from our small dealers?

SENATOR CLEGG: My understanding is that the documentation as it says is...and my understanding is that there was supposed to have some type of proof previously, but now it requires that they prove it with opening and closing inventory readings, pump meter readings or the purchase of their products.

SENATOR LARSEN: So is there additional paperwork required of all of our small dealers because we are changing it from an automatic deduction to an actual loss proof situation?

SENATOR CLEGG: I don't think that it is anymore, other than they have to include the numbers on the application for their refund.

SENATOR LARSEN: Okay. Thank you.

SENATOR BELOW: Thank you Mr. President. I rise in support of the committee report and Senator Clegg's remarks. There is a little additional paperwork. They have to pull the paperwork together and apply for the refund just as somebody submitting any other tax or tax refund would have to do. It is important to note that they have to keep these records anyway. They keep the inventory records. They are all computerized now. It is automatic output. Everything that they are doing, it is already recordkeeping what they are doing. I had several dealers call me up. When I asked them if this was going to be significantly more paperwork, their answer was no, that they have to keep track of this anyway for environmental reporting to make sure that they weren't having a leak. It is significant to note that very few states are at the one percent level. There is both shrinkage and expansion. They both happen. If we actually having reporting and there is well documentation that it is over

three-quarters percent, we can certainly reconsider this, but most states have gone to half a percent or less and the suspicion is that when we actually see the reporting, probably...it will be a surprise if people running into three-quarter percent level. So people will be getting the refund due.

**SENATOR D'ALLESANDRO:** Thank you Mr. President. I, too, rise in support of the bill as amended. I think that the bill as amended, was a compromise to try to protect that small dealer. I agree with Senator Gatsas, that is what we are here for. We are trying to do that. A lot of time and effort was spent in order to preserve that situation and I applaud Senator Clegg on his efforts on that behalf. I know that I have heard from people in my area and work with him, to try to make this happen. It is the right thing to do at this time. It is a good piece of legislation. I don't think that anybody is losing out. When you come to a compromise that makes sense to both parties, and that is what government is all about. It works for both parties, and as a result, I strongly support this piece of legislation. Thank you Mr. President.

**SENATOR FLANDERS:** Thank you Mr. President. Just briefly. There is a statement that I want to talk about: it is on the last page. A lot of work and compromise went into this bill. I agree that it is a good bill. I have talked to several stations. If any of you, when you are getting gas, you will see somebody coming out, everyday they go to those pumps and they take a number off of them. That is the gallon usage. This is information that they already have, because when the gas is delivered and it goes through a tank and they have a tape thing delivery and then how much they pump and it is very little extra paperwork. Why shouldn't they? I mean, how many claims can you claim and not prove what you have lost? I think that this is a good bill and it should be passed. Thank you.

**SENATOR GREEN:** I have heard numbers, amounts of money being talked about. I am looking at the bill and there is no fiscal note. I have no way to know what the actual amounts involved are here. It says that due to time constraints and so forth, that they were unable to give any calculation. Does anyone in the chamber have a fiscal note on this bill?

**SENATOR CLEGG:** They couldn't possibly come up with a fiscal note because we have no idea once people have to prove their shrinkage, how much money we are actually giving back, but we know that we are giving away a million dollars today and we are assured that we will be giving back at least \$250,000 less, so the fiscal note would say that there would be a \$250,000 savings to the Highway Fund.

**Question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Gatsas.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Kenney, Boyce, Below, Flanders, Odell, Peterson, O'Hearn, Foster, Clegg, Larsen, Martel, Sapareto, D'Allesandro, Estabrook, Morse, Prescott, Cohen.**

**The following Senators voted No: Gallus, Johnson, Green, Roberge, Gatsas, Barnes.**

**Yeas: 17 - Nays: 6**

**Adopted.**

**Ordered to third reading.**

**SB 74-FN-A-L**, increasing certain motor vehicle registration fees and appropriating the funds for local government records management programs. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Martel for the committee.

**Senate Transportation**

**February 19, 2003**

**2003-0360s**

**08/01**

**Amendment to SB 74-FN-A-LOCAL**

Amend the bill by replacing section 1 with the following:

1 Motor Vehicles; Preparation of Documents. Amend RSA 261:152 to read as follows:

261:152 Preparation of Documents. Permits shall be in the form prescribed by the director and shall be issued with such duplicates as ~~he~~ **the director** shall determine. The town clerk shall prepare forms for permits and applications for registration of vehicles as required by RSA 261:52. Said forms shall be prepared ~~by typewriter~~ **in an electronic format**. Distribution of such documents shall be made as determined by the director. For preparation of the forms hereunder the town clerk shall receive a fee of ~~[\$1]~~ **\$2** for each application. ***Fifty cents of this amount shall be used to support records management and records preservation programs in local government, and \$.50 shall be deposited in the local government records management improvement fund established under RSA 5:48.*** The fee shall be paid by the applicant for registration and shall be in addition to any other fees required hereunder. The term "town clerk" as used in this section shall include the person in a city who has been designated by the city government to issue such documents.

SENATOR MARTEL: Thank you Mr. President. I move SB 74 ought to pass as amended. Senate Bill 74 increases the municipal motor vehicle fee from \$1 to \$2 and appropriates the funds for local government records management, records preservation programs, and training workshops for town and city clerks. In many cases, New Hampshire's municipal clerks are called upon to do work that requires specialized training. The additional funds that SB 74 will create will be used to pay for these workshops. The Transportation Committee feels that this change is long overdue as twenty years have passed since the last increase in municipal motor vehicle fees. We recommend SB 74 ought to pass as amended. Thank you.

**Amendment adopted.**

Question is on the adoption of the bill as amended.

**Adopted.**

**Ordered to third reading.**

**SB 173**, relative to certain historical and recreational facilities. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Kenney for the committee.

**Senate Transportation**

**March 6, 2003**

**2003-0592s**

**05/09**

**Amendment to SB 173**

Amend RSA 236:70, XX as inserted by section 2 of the bill by replacing it with the following:

XX. The words "recreational and cultural interest area sign" shall mean a sign that meets the physical standards set by the federal government in the "Manual on Uniform Traffic Control Devices" (MUTCD), which shall be used as directional, informational, or supplemental guide signs. Recreational and cultural interest area signs shall be available to alpine and nordic ski areas that are recognized by the state in state-sponsored publications and shall be used on the primary or secondary highways and roads of and within the state. Recreational and cultural interest area signs shall be designed to direct the traveling public to the recreational facility. The ski area listed on the sign shall pay for all costs associated with signs approved under this section.

SENATOR KENNEY: Thank you Mr. President. If I may, I would like to defer to Senator Morse.

SENATOR MORSE: Thank you Mr. President. I move SB 173 ought to pass as amended. Senate Bill 173 will make available recreational and cultural interest signs to alpine and nordic ski areas recognized by the state. These ski areas will become part of the federal Department of Transportation's "Brown Sign" program. Senate Bill 173 opens opportunities for all New Hampshire ski areas to have a consistent presence on primary and secondary highways and roads. The new signs will be brown, rectangular, and have a white legend and border. Senate Bill 173's amendment clarifies that all sign costs will be paid for by the individual ski area. The Transportation Committee recommends SB 173 ought to pass as amended, 5-0 vote in the committee. Thank you.

#### **Amendment adopted.**

Senator Johnson offered a floor amendment.

Sen. Johnson, Dist. 2

**March 11, 2003**

**2003-0640s**

**05/09**

#### **Floor Amendment to SB 173**

Amend RSA 236:70, XX as inserted by section 2 of the bill by replacing it with the following:

XX. The words "recreational and cultural interest area sign" shall mean a sign that meets the physical standards set by the federal government in the "Manual on Uniform Traffic Control Devices" (MUTCD), which shall be used as destination, directional, informational, or supplemental guide signs. Recreational and cultural interest area signs shall be available to alpine and nordic ski areas that are recognized by the state in state-sponsored publications and shall be used on the primary or secondary highways and roads of and within the state. Recreational and cultural interest area signs shall be designed to direct the traveling public to the recreational facility. The ski area listed on the sign shall pay for all costs associated with signs approved under this section.

SENATOR JOHNSON: I would like to offer a one-word floor amendment today to SB 173. While that is being passed out, it is line five on the amendment. The word that we are adding is "destination". As we have heard, this bill seeks to permit ski areas in New Hampshire to be eligible for the use of brown signs to direct the traveling public to these recreation areas. Our state law will be consistent with the federal government Department of Transportation's manual on uniform traffic control devices. The New Hampshire Ski Industry is long, and

positive history in our state and this bill would enable these businesses to serve our tourist trade here in New Hampshire. As many of us know, the tourism business in this state is critical to our economy and the state revenues that serve to fund the state budget, so I ask you to favor the amendment. Thank you Mr. President.

**Floor amendment adopted.**

SENATOR PETERSON: Thank you Mr. President. I would like to add my support to this bill and thank Senator Morse, Kenney and others who have worked on it. We have had two ski areas that are within close proximity of my home in Peterborough, close over the last few years. One of them has now been blessed with a company coming forward to put investment into that ski area and get it reopened. It is a very important thing to the economy of that region and this small measure of allowing signs to direct parties there, is something that I think is most appropriate and will be to their effort, very helpful. So I thank all those involved.

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 198**, relative to a certain highway sign in Concord. Transportation Committee. Ought to pass, Vote 5-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. I move SB 198 ought to pass. This permits one sign identifying the location of the Concord Courtyard Marriott within 500 feet of Exit 12 on Interstate 93 in Concord. The City of Concord, Regional Chamber of Commerce, and Department of Transportation fully support the new sign where we have placed it in this legislation. By placing a sign on Interstate 93, the Courtyard Marriott feels that they will be better able to serve their customers and prevent traffic accidents caused by people not able to find the hotel. Let me give you a very brief history: The owners of the Courtyard own the Brick Tower and they were planning on building this area at the Brick Tower. The City of Concord convinced them not to build there but to go on the other side of town, an area that needed to be spruced up. As the result of going down there, they did not get their sign permits because they thought that would come later. The problem is, when you are traveling north on 93, there is a bridge abutment, and there is no way to put a sign there, and people are missing their exit and they are backing up and it is causing a traffic problem. The only alternative to this is to put a 90 foot sign on the backside of the bridge abutment that would stick up there and it would not be favorable to the City of Concord. This one sign replaces three signs that were already there. If you remember when the Brick Tower was in business, there were three signs there and they are gone. The problem being is that they owned this land and they sold it. They need this legislation to put that sign at that location, which they owned and had planned to put that sign in the first place. We urge support of this bill. Thank you very much.

SENATOR LARSEN: While this bill is in Concord and dealing with a Concord problem, it is too bad that they didn't come to Concord's representative. I was aware of it coming through, but I do...but while recognizing that Concord has a genuine problem with the location of what was meant to be our civic center, I have some concerns with the precedent that we set in passing SB 198. I truly wish that there were another way

to accomplish this. I am also a bit concerned...I do in fact, want to find a way to appropriately place signage on the highway so that Concord's hotel and meetings conference center is visible, but I do have trouble with this precedent. I also have trouble with the hearing report which says that the division administrator of the U.S. Department of Transportation came to the committee and worried that the bill as written, would place New Hampshire out of compliance with federal law, and that violations could lead to New Hampshire losing as much as 10 percent of its annual federal Highway Aid apportionment. I hope that this is not true. I do think that this signage issue needs to be resolved and I genuinely hope that we are not bending the rules for what we know as a friend of many, but setting a bad precedent as a result. So I just had to speak on that issue. I am not opposing the bill but I have genuine concerns about its precedence setting. Thanks.

SENATOR FLANDERS: I apologize for not including you Senator Larsen. The reason wasn't because you fell though the cracks. This came to my attention one hour before three o'clock on the Friday that the bills were closing and that is the only reason that my name is on it because I was the only one that he found at home, I think. The only reason that I am supporting this is because I agree with some of the concerns that you have that the City of Concord is working with the owners, and this is a solution that the City of Concord and the planners and the variance...They jumped all the hoops that they had to jump to get permission for this sign. The variances are issued. Everything has been issued. The City of Concord approves it and that is the reason I am approving it.

**Adopted.**

**Ordered to third reading.**

**SB 222-FN-A**, relative to motor vehicle fees. Transportation Committee. Ought to pass, Vote 5-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you Mr. President. I move SB 222 ought to pass. This bill will increase motor vehicle registration fees to provide funding for the administration of the state's electronic motor vehicle On-Board-Diagnostic Emissions and Safety Inspection. This program is required by the federal Clean Air Act. Failure to comply with this agreement would place New Hampshire in violation of the federal regulation and potentially subject to a moratorium on federal highway project approvals and funding. The Transportation Committee voted unanimously in favor of SB 222 and asks that you join us in voting this bill ought to pass. Thank you.

SENATOR BOYCE: Mr. President, I rise in opposition to this bill. I understand that the federal government thinks that this is something that they want and need, but I remember a few years ago that they told us that they wanted us to do vehicle emission testing on vehicles in the southern counties. We reached an agreement with them at that time that we would instead implement something called "reformulated gas", which we now find was a very bad mistake to let it in here. It has MTBE in it and now we wish that we had never done that. But this is a backdoor way of doing what they told us to do then, which we told them we didn't want to do, which was the emissions testing of vehicles in the state. This puts in emission testing in the state, under the guise of being part of the safety inspection. It is also going to raise the fees. That is a new tax. It is a new tax for driving a vehicle. I am not in favor of that. I am not in favor of increasing these other fees unless there is

some real justification for wanting to raise these fees. I don't understand the justification for that. I basically don't like this bill at all. Thank you very much.

**Recess.**

**Out of recess.**

SENATOR KENNEY: I would like to ask my fellow colleagues in the Senate to vote down SB 222 so that I can make a subsequent motion.

**Motion failed.**

**Senator Kenney moved to rerefer.**

SENATOR PRESCOTT: Thank you Mr. President. I would like to say that we have an opportunity on January 1, 2004 to opt out of using reformulated gas in the lower counties of New Hampshire. We want to do that because we know that MTBE is not a good thing. When spills occur MTBE travels very fast in our water supplies. This bill before us, that we are referring to take a very much closer look at, may be the vehicle that we can use with the onboard diagnostics of emissions, to be able to opt out of the program that we are straddled with right now. Thank you Mr. President.

**Adopted.**

**SB 222-FN-A is rereferred to committee.**

**HB 517-L**, relative to Keene Road and Main Street in the town of Hillsborough. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Flanders for the committee.

**Senate Transportation**

**March 7, 2003**

**2003-0594s**

**05/01**

### **Amendment to HB 517-LOCAL**

Amend the title of the bill by replacing it with the following:

AN ACT relative to the classification of certain roads in the town of Hillsborough and transferring ownership of any residual interest in a certain parcel of property from the state to the city of Keene.

Amend the bill by replacing all after the enacting clause with the following:

1 West Main Street in the Town of Hillsborough; Classification Changed to Class V. West Main Street in the town of Hillsborough, formerly a portion of New Hampshire Route 9, beginning at the intersection with Route 9 and running easterly a distance of 1.35 miles to the intersection with United States Route 202, shall be reclassified as a class V highway.

2 Henniker Street in the Town of Hillsborough; Classification Changed to Class V. Henniker Street in the town of Hillsborough, formerly a portion of New Hampshire Route 9, beginning at Central Square, being the intersection with New Hampshire Route 149 and running easterly a distance of 2.10 miles to Old Henniker Road, shall be reclassified as a class V highway.

3 Transfer of Ownership of any Residual Interest in a Certain Parcel of Property from the State to the City of Keene.

I. Notwithstanding the provisions of RSA 4:40 or any other provision of law, the state forthwith shall, for consideration of \$1, transfer to the city of Keene, its successors or assigns, or both, any remaining interest it may have in a certain section of former Route 12, lying between sta-

tion 463+00 to and Park Avenue in Keene, as shown on a plan entitled "Plans of Proposed Federal Aid Primary and Federal Aid Urban Project No. FU 013-1(7) N.H. Project No. P-3436 Route 12," which plan is subtitled "Reclassify Old Route 12 From Class 1 to Class 5 From Station 463+00 to Compact at Park Avenue. A Distance-1.30 Mi." including but not limited to title to the property.

II. Notwithstanding any provisions of RSA 78:B to the contrary, this transfer shall not be subject to the real estate transfer tax.

III. The transfer of this parcel of land shall be finalized as soon as practicable following the effective date of this section.

4 Effective Date.

I. Sections 1 and 2 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect upon its passage.

**2003-0594s**

### AMENDED ANALYSIS

This bill reclassifies portions West Main Street and Henniker Street in the town of Hillsborough.

This bill also transfers a certain parcel of property from the state to the city of Keene.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. This is a housekeeping bill. It is a bypass in Hillsborough. We are asking that the state road, which went through the center of Hillsborough now become a town road. The state has done repairs on this road and the town of Hillsborough has made certain agreements to accept that portion of the road; therefore, I ask that you support that. There is also an amendment from the committee. The amendment is a very interesting amendment for the city of Keene. In 1966 they rebuilt the road from Keene to Brattleboro, Vermont, and I have a letter here dated December 7, 1966 where John O. Morton, Commissioner, wrote a letter to the Mayor in Keene and said that they don't want that land anymore, you can have it. So thirty some odd years later, the city of Keene wants to sell that land so that CNS Warehouse grocer headquarters can be built, which will bring about \$15 million in cash and about 400 jobs. So if we agree to spend \$1 on transferring that land to Keene, Keene can have 400 new jobs and a \$15 million new building. I ask that you support this bill as amended.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 19-FN**, relative to notification of groundwater contamination and repealing certain MTBE notification requirements for public water systems. Environment Committee. Ought to pass with amendment, Vote 3-2. Senator Prescott for the committee.

**Environment**

**February 6, 2003**

**2003-0206s**

**03/01**

### Amendment to SB 19-FN

Amend RSA 485-C:14-b, II as inserted by section 1 of the bill by replacing it with the following:



II. Notification shall be made in writing within 30 days following confirmation of the contamination. Each property owner or public water supplier shall be notified at least once upon the discovery of contamination in an area. The commissioner shall provide the notification and may provide additional notification as the extent of contamination at a site is further determined and remediation occurs. This section shall apply only to groundwater contamination confirmed by sampling conducted by the department or at its direction.

SENATOR PRESCOTT: Thank you Mr. President. I would ask that we would vote concerning one part of the committee amendment, but with working with Senator Below and the rest of the committee, we have had two bites of the apple on this bill or two strikes as it may be. We would like not to get it wrong the third time. I would like to be able to present a floor amendment to SB 19 and be able to speak to that amendment and would like to know the parliamentary procedure to get that done?

SENATOR EATON (In the Chair): The first order of business is the committee amendment. Your desire on the committee amendment?

SENATOR PRESCOTT: From the committee as ought to pass with amendment. I would ask that you vote for the adoption of the bill and then I will present an amendment to replace the entire bill. Thank you Mr. President.

SENATOR BELOW: Thank you Mr. President. I think that Senator Prescott and I are actually in agreement on what should happen here, but I think to be clear, we want to adopt the committee amendment because the floor amendment builds off of the bill as will be amended by the committee amendment. It does replace the title and some parts of the bill, but it doesn't replace quite the whole thing. Thank you.

#### **Amendment adopted.**

Senator Prescott offered a floor amendment.

Sen. Prescott, Dist. 23

Sen. Below, Dist. 5

**March 13, 2003**

**2003-0688s**

**06/01**

#### **Floor Amendment to SB 19-FN**

Amend the title of the bill by replacing it with the following:

AN ACT relative to notification of groundwater contamination and requiring a certain report from the department of environmental services.

Amend the introductory paragraph of RSA 485-C:14-b, I as inserted by section 1 of the bill by replacing it with the following:

I. Upon the discovery of groundwater contamination where one or more regulated chemical or radiological contaminants exceeds ambient groundwater quality standards, the commissioner shall provide notification of the presence of the contamination to the following:

Amend the bill by replacing all after section 1 with the following:

2 Department of Environmental Services Report; MTBE. By November 1, 2003, the commissioner of the department of environmental services shall report to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor and the state library relative to the department's plan to opt out of the MTBE additive to gasoline program by January 1, 2004.

3 Applicability. Section 1 of this act shall apply only to groundwater contamination discovered on or after the effective date of this act.

4 Effective Date. This act shall take effect 60 days after its passage.

**2003-0688s**

#### AMENDED ANALYSIS

This bill requires notification of certain property owners, public water suppliers, and health officers when groundwater contamination is discovered and requires a report from the commissioner of the department of environmental services relative to the department's plan to opt out of the MTBE gasoline additive program.

SENATOR PRESCOTT: I rise to offer a floor amendment. This is an act relative to notification of groundwater contamination and requiring a certain report from the Department of Environmental Services. The notification bill was passed unanimously last term. I believe that it isn't fair that a homeowner living next to a contaminated well, within 500 feet, should hear about their neighbors contaminated water in the newspaper or from a neighborhood grouping or meet someone at the post office or school. I believe that they should be notified if the state knows of a contamination in the water supply of any residence or well, they should notify within 500 feet, all of those abutters, because it is a health risk to drink water that has a countermeasured level of... a level above contaminated levels for chemicals in our water supply. That is one part of the bill. Like I mentioned, it was passed unanimously last term. The second part is urging the Department of Environmental Services to give us a report. The impetus of this bill came to me because the instance where the neighbor heard of the contamination in their neighbors well was the instance of MTBE in Derry. It was quite a concern in that neighborhood in Derry. I presented the bill as a notification bill for all chemicals that happen to get into our water supplies, not just MTBE, but MTBE is the emphasis here. So I ask the report to be given by the Department of Environmental Services telling them, the Commissioner of the Department of Environmental Services, to report to the Senate President, the Speaker of the House of Representatives, the Senate Clerk, the House Clerk, the Governor and the State Library, relative to the department's plan to opt out of the MTBE additive to gasoline program, by this January 1, 2004. We want the report prior to the opt out time, so this bill tells them that we need that report by November 1 of this year. We hope, I hope, that the Senate sees the implementations of trying to get MTBE out of our gasoline supply so that we can keep it from contaminating our water supply. Thank you very much Mr. President. I urge ought to pass on the floor amendment.

SENATOR BELOW: Thank you. I rise in support of this floor amendment. The bill does codify certain notification requirements that the previous Governor put into effect by executive order. This codifies those. In addition, unlike the bill that actually was passed in the last session, with this amendment, we will not be repealing the notification requirement for public water supplies when there is MTBE above five parts per billion. I think that is important simply because there is still uncertainty as to what the best standard should be. I would note that a study by the University of California Davis as part of a report that was commissioned by the state legislature of that state, one of the sections of that report on exposure of humans to MTBE from drinking water by Doctor Michael Johnson, evaluated potential carcinogenic impact of MTBE and he concluded "that to be completely protective of all members of the popula-

tion with respect to cancer risk, the concentration of MTBE in drinking water should not exceed five parts per billion." Now our Department of Public Health has adopted and DES has adopted a 13 part per billion maximum contaminate load for health reasons which is actually what California has actually adopted. California did adopt a secondary MCL maximum contaminate load of five parts per billion for odor, for taste, and for notification. In California, water supplies that have more than five parts per billion do have to act to try to reduce that. In fact, there is a national standard from the ANC Standards Bureau for remediation of MTBE that is based on getting it down below five parts per billion. So there is a rationale for why we have five parts per billion in the law now and I think that it is good that the amendment allows that to continue. I think it is appropriate to err on the side of being safe to inform, so that our constituents can know where there might be a concern and where they could actually go out and buy a product that would reduce their potential exposure by filtering their water. So thank you.

SENATOR LARSEN: Senator Below, was it my understanding that this is a particular concern even at a low level to infants and **TAPE CHANGE** sensitivity to MTBE might in fact be greater than that of an adult?

SENATOR BELOW: Yes. That particular study that I was citing, he did analyze the risk for the perhaps, most vulnerable or those most sort of the highest in a likely exposure from drinking water, and found that that is for those individuals with a higher breathing rate per body weight, which is typically infants and children. So that is why he recommended thirteen parts per billion might be adequate for health for adults, but the lower standard might be appropriate for exposure for infants and children. That was the basis for that, plus, when the state of California adopted that as a secondary standard, they did find through a couple of studies that that is a reasonable threshold both in terms of what be accurately measured and it is a reasonable threshold in terms of where a significant portion of the population can start to smell and taste it. So I think sometime people may be smelling or tasting something funny in their water, wondering what it is, if there is notification when it is above five parts per billion, but before thirteen parts per billion, then that might explain to some people why they are tasting something funny in their water.

SENATOR LARSEN: Thank you.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 103-FN**, establishing a credit against the business profits tax for contributions under a rental equity builder program. Ways and Means Committee. Inexpedient to legislate, Vote 4-1. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise to support the committee position of inexpedient to legislate and ask the Senate to support inexpedient to legislate. It is an interesting concept that was brought forward. It is something that is being attempted in other parts of the country, but I believe that the committee thought that it hadn't seen its day in New Hampshire at this point in time. As a result, there are programs available in New Hampshire, particularly for first home

buyers through the New Hampshire Housing Finance Authority and other situations. That problem seems to be being addressed at this time, as a result, we thought it should be inexpedient to legislate and hope that you will support that position. Thank you Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**SB 79-FN-L**, relative to animal cruelty. Wildlife and Recreation Committee. Ought to pass with amendment, Vote 4-0. Senator Roberge for the committee.

**Wildlife and Recreation**

**March 5, 2003**

**2003-0516s**

**08/01**

**Amendment to SB 79-FN-LOCAL**

Amend RSA 644:8, IV(a) as inserted by section 1 of the bill by replacing it with the following:

(a) In addition to being guilty of crimes as provided in paragraphs III and III-a, any person charged with cruelty to animals may have his or her animal seized by an appropriate law enforcement officer. Courts shall give cases in which animals have been confiscated by an arresting officer priority on the court calendar.

Amend RSA 644:8, IV(b) as inserted by section 1 of the bill by replacing it with the following:

(b) The owner or custodian of any animal that has been seized pursuant to this section or 644:8-a, or because of investigation of charges of cruelty to animals or for exhibition of fighting animals will have his or her animal held pursuant to RSA 595-A:6, and as provided as follows:

(1) The seizing officer shall notify the owner of the seized animals of the provisions of this section by posting written notice at the location where the animal was seized or by leaving it with a person of suitable age and maturity residing at that location within 24 hours of the seizure. This notice shall provide the type and number of animals seized, the name of the officer, the time and date taken, the reason it was taken and any other relevant information.

(2) The seizing officer shall appoint as custodian a licensed veterinarian or other animal care center as defined by RSA 437:18 to care for any such animal. The custodian shall retain custody of the animal in accordance with this section.

(3) The custodian shall document by affidavit the animal's condition within 24 hours after posting of the notice of seizure.

(4) The seized animal shall be held by the custodian for a period of 15 days, including weekends and holidays, after such notice of seizure is given, or until a show cause hearing is held. Thereafter, a person who claims an interest in such animal but has not posted bond in accordance with subparagraph (c), then the animal may be disposed of as provided in RSA 595-A:6.

Amend RSA 644:8-a, I as inserted by section 2 of the bill by replacing it with the following:

I. No person shall keep or train any bird, dog, or other animal, with the ~~[intent]~~ **purpose** that it shall be engaged or used in an exhibition of fighting, or shall establish or promote an exhibition of the fighting thereof. Whoever violates the provisions of this paragraph shall be guilty of a class B felony ~~[in the case of dogs, and a misdemeanor in the case of birds or other animals]~~.

Amend RSA 644:8-a, III as inserted by section 2 of the bill by replacing it with the following:

III. All animals so kept or trained by a person charged with violating the provisions of paragraph I may be seized by the arresting officer, **pursuant to RSA 595-A:6 and RSA 644:8** upon said person's conviction, said animals may, at the discretion of the court, be destroyed in a humane manner by a licensed veterinarian. ~~[The costs, if any, incurred in boarding the animals, pending disposition of the case, and in disposing of the animals, upon a conviction of said person for violating paragraph I, shall be borne by the person so convicted.]~~

SENATOR ROBERGE: Mr. President, I would like to change the committee recommendation to recommit. The bill needs further review.

**Senator Roberge moved to recommit.**

**Adopted.**

**SB 79-FN-L is recommitted to the committee.**

**SB 206-FN**, relative to the registration of OHRVs used as grooming equipment for cross country ski trails. Wildlife and Recreation Committee. Ought to pass with amendment, Vote 4-0. Senator Sapareto for the committee.

### **Wildlife and Recreation**

**March 4, 2003**

**2003-0499s**

**10/04**

### **Amendment to SB 206-FN**

Amend the bill by replacing all after section 2 with the following:

3 Bureau Responsibilities; Cross Country Ski Trail Maintenance. Amend RSA 215-A:3, VI to read as follows:

VI. The supervisor of the bureau shall receive all written requests from ~~[persons]~~ **organizations** applying for permission to establish a highway trail crossing or trail connector on any class I, class II or class III highway for any OHRV trail **or cross country ski trail on which an OHRV trail maintenance vehicle may operate**. The requests shall be submitted by the supervisor to the commissioner of the department of transportation or the commissioner's representative for the department's approval or disapproval. If approval is granted, the commissioner of the department of transportation may post the area with appropriate signs designating the location of the trail crossing or trail connector and providing signs for both sides of the highway at an appropriate distance from the crossing or trail connector to warn the motoring public of said crossing or trail connector.

4 OHRV Registration Fees; Trail Maintenance Vehicles. Amend RSA 215-A:23, XI to read as follows:

XI. Notwithstanding any other provision of this section, \$5 for each set of plates for OHRV trails maintenance vehicles **used to maintain OHRV trails**. No other fees shall be collected under this chapter for the registration of such vehicles. Any such funds collected shall be appropriated to the department of fish and game for the costs of administration of OHRV trails maintenance vehicles.

5 New Paragraph; OHRV Registration Fees; Cross Country Ski Trail Maintenance Vehicles. Amend RSA 215-A:23 by inserting after paragraph XI the following new paragraph:

XII. Notwithstanding any other provision of this section, \$50 for each set of plates for OHRV trails maintenance vehicles used to maintain cross

country ski trails. No other fees shall be collected under this chapter for the registration of such vehicles. From each registration fee collected, \$5 shall be appropriated to the department of fish and game for the costs of administration of OHRV trails maintenance vehicles and \$45 shall be appropriated to the bureau of trails for the administration of the bureau.

6 Effective Date. This act shall take effect July 1, 2003.

**2003-0499s**

#### AMENDED ANALYSIS

This bill adds cross country ski trail maintenance OHRVs to the term "OHRV trails maintenance vehicles" for purposes of OHRV registration and establishes a registration fee for cross country ski trail maintenance vehicles.

The bill also includes cross country ski trail connectors in the supervision of highway right-of-way crossings.

SENATOR SAPARETO: Thank you Mr. President. I move SB 206 ought to pass as amended. Senate Bill 206 will add cross country ski trail maintenance OHRV'S under the classification of "OHRV trails maintenance vehicles" for registration purposes, and places cross-country ski trail connectors under the supervision of the Department of Transportation as a state highway right-of-way. Senate Bill 206's amendment simply clarifies that an organization, not an individual, can apply for permission to establish a highway trail crossing or trail connector and specifies the Bureau of Trails appropriation of the \$50 OHRV registration fees. Senate Bill 206 has the support of the Department of Fish and Game, Bureau of Trails, and Ski NH. I move SB 206 ought to pass as amended. Thank you.

SENATOR BELOW: I just wanted to thank the committee for the work on the bill. I think that the cross country ski areas will really appreciate having this clarification in the law.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

#### MOTION TO REMOVE FROM THE TABLE

Senator Below moved to have **SB 212** taken of the table.

**Adopted.**

**SB 212**, requiring fiscal impact statements for interim administrative rules and prohibiting agencies from requiring by rule the submission of social security numbers.

SENATOR BELOW: Thank you Mr. President. I would like to urge the body to defeat the committee amendment. The committee amendment is incorporated into the floor amendment. Just to refresh your memory, this is the issue that Senate Gatsas raised about the bill that requires or prohibits agencies by rule requiring submission of social securities unless they're required by law. What the floor amendment would do is allow the requirement for fiscal notes to interim rules to go into effect in 60 days and it would make the social security part of the bill, the same effective date as the committee amendment would have done. So I urge you to defeat the committee amendment at this time.

**Question is on the adoption of the committee amendment (0554).**

**Amendment failed.**

Senator Below offered a floor amendment.

Sen. Below, Dist. 5

**March 13, 2003**

**2003-0684s**

**03/05**

### **Floor Amendment to SB 212**

Amend the bill by replacing section 3 with the following:

3 Effective Date.

I. Section 2 of this act shall take effect July 1, 2004.

II. The remainder of this act shall take effect 60 days after its passage.

SENATOR BELOW: Thank you Mr. President, I rise to offer a floor amendment. Real simple, it makes the first part of the bill effective 60 days after passage, which is the requirement that the interim rules, Administrative Rules, have fiscal notes. It makes section two of the bill have an effective date of July 1, 2004. Section two of the bill is the one that will prohibit agencies from requiring by rule, submission of social security numbers unless mandated by state or federal law. The reason again, for that delay in that, is so that the agency can either amend the rules to have other identifying numbers, if they don't have authority by law or they can come to the legislature next year and seek the legislative requirement that people submit social security numbers so that we don't disrupt current rules. Thank you Mr. President.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

### **RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills ordered to third reading be by this resolution read a third time and all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

### **LATE SESSION**

#### **Third Reading and Final Passage**

**SB 36-FN**, relative to protective custody of a person impaired by drugs and establishing a committee to study the issue of the applicability of the administrative license suspension laws to driving while under the influence of controlled drugs and ways to address the speed with which such cases are adjudicated in the district court.

**SB 40**, relative to filing of complaints for violation-level offenses and making the electronic submission of a false statement chargeable as unsworn falsification.

**SB 47-FN**, relative to refunds for tolls paid on account of shrinkage or loss by evaporation of motor fuel.

**SB 59-FN**, relative to administrative license suspension hearings.

**SB 74-FN-A-L**, increasing certain motor vehicle registration fees and appropriating the funds for local government records management programs.

**SB 98-FN**, prohibiting telemarketers from contacting customers on a federal do-not-call registry.

**SB 113**, changing the name of Plymouth state college to Plymouth state university.

**SB 139**, relative to exhibition fees charged by the boxing and wrestling commission.

**SB 143**, establishing a commission to study and review the regulation of the building trades.

**SB 146**, relative to eligible costs for training grants in the job training program for economic growth.

**SB 152**, relative to health insurance coverage for prosthetic devices.

**SB 155**, establishing a commission to study issues relative to water withdrawals.

**SB 157**, establishing a committee to study the vesting of development rights.

**SB 162**, establishing a committee to study water resources.

**SB 165**, relative to the voluntary dissolution of nondepository trust companies.

**HB 171**, establishing a commission to assess the operating efficiency of state government.

**SB 173**, relative to certain historical and recreational facilities.

**SB 176**, relative to standards for plats recorded in the registry of deeds.

**SB 198**, relative to a certain highway sign in Concord.

**SB 206-FN**, relative to the registration of OHRVs used as grooming equipment for cross country ski trails.

**SB 210**, relative to the administrative procedures of the real estate commission.

**SB 212**, requiring fiscal impact statements for interim administrative rules and prohibiting agencies from requiring by rule the submission of social security numbers.

**SB 219**, relative to superior court notice to health care regulatory boards of felony convictions of health care providers.

**SB 223-FN-A**, relative to fees for copies of motor vehicle records and relative to the fire standards and training and emergency medical services fund.

**HB 517-L**, relative to Keene Road and Main Street in the town of Hillsborough.

### ANNOUNCEMENTS

**SENATOR LARSEN (RULE #44):** Mr. President, on the topic that there is no free lunch, we had a free breakfast this morning that was furnished from our New Hampshire Food and Nutrition Folks. In return, they asked us to help them in the reauthorization of the Child Nutrition Act in Wash-



ington. This clearly is the lunch program, the breakfast programs, which provide nutritional assistance to so many children in New Hampshire. We have a letter that they asked us to sign onto which I have copied and we will put up at Hank Wilsons' desk, and as people leave, they can consider signing it. It encourages the continuation of the school breakfast program. It encourages the income limits to be in-line with the WIC guidelines. It encourages the USDEA reimbursement rates to continue to be favorable for New Hampshire. It is clearly some federal assistance, which will help so many children in this state, that I would save all of you having to write your own letters, by having our letter signed by as many Senators as can possibly sign onto that. I will put it up at Hank Wilsons' desk, as you leave today, perhaps you will sign it with us. Thank you.

SENATOR D'ALLESANDRO (RULE #44): Thank you Mr. President. In support of what Senator Larsen is requesting that we do...in 1973 I sponsored the School Feeding and Nutrition Act for the state of New Hampshire. We were the third state in the United States to offer the lunch program, the feeding program in all of our schools. The original bill was proposed by Senator Humphrey. It was the National School Lunch Program. That program has been in existence for a number of years. It has provided an opportunity for people to have a meal in their schools. It was then subsequently added, a breakfast program, which is in place in some schools, I know that in Manchester, we certainly take advantage of it. It is a very worthwhile situation. It is a very worthwhile program, and it is really something that we ought to support. We were really front runners, as always, New Hampshire is a front runner when it comes to doing things and doing things right. We have had it in place for a number of years. Thank you Mr. President.

SENATOR D'ALLESANDRO (RULE #44): Thank you Mr. President. As Reverend Jones referred to the passing of Mr. Rogers, I would like to just spend a moment of the Senate's time to talk about the passing of Joe Carney. Joe, one of the owners of Rockingham Park. Joe Carney was a personal friend of mind for a long, long time. A man who certainly was devoted to his family and really devoted to New Hampshire and really devoted to racing. Joe Carney was devoted to helping people and he manifested that on a number of occasions and in many ways. In this lifetime we talk about the rare situation when relationships are such a positive aspect of our lives. Knowing people, relating to people and having people respond to that relationship. Let me give you an instance where Joe Carney responded to that relationship: I had a handicapped friend, who for most of her life, was not able to interface. She had to be home schooled through her childhood. It was only through pressure that she was allowed to go to high school because she was confined to a wheelchair and then went on and did great things. She received her bachelors and masters degree. But this young person had never really been to an event at a racetrack and was just thrilled to be given an opportunity to go to this track, and Joe provided that opportunity. Made it a comfortable situation. He did that because he had a great love for people. With the passing of Joe Carney, we suffer a great loss because of that great affinity for people helping people and trying to make good things happen. Many of us in this room have had an association with Joe and his family. He was just a remarkable individual and did a lot of things behind the scenes to help people. He was always willing to help people. His passing was sudden. It is truly tragic, and it really leaves a void. I couldn't let the day go by without saying to you that Joe Carney was the

kind of guy that you could really love. He was the kind of guy that you could embrace. He was the kind of guy who responded to peoples need. What we need in this world is more people who fall into that category. We need more people who are willing to help others and who reach out and do that. Not to get accolades, but just to do it because it is the right thing to do. Joe Carney did it because it was the right thing to do. Thank you Mr. President.

SENATOR SAPARETO (RULE #44): I, too, would like to take note of a dedicated public servant and a good friend also. Mr. Ernest Barker from my **TAPE INAUDIBLE** he was loved by a lot of people and he pretty much told people the way things worked. He was never one to hold things back. I think that our community suffered a great loss when we lost such a dedicated individual and I couldn't let this go by without saying something.

SENATOR MORSE (RULE #44): Thank you Mr. President. On a note that is not so light, I asked Joe Carney's family if it was done on purpose, that they held the funeral at ten o'clock on a day that we would all be in session? I know that we would all want to be there. He is very important to the community that I represent and I don't believe that they did it on purpose. There were a lot of people coming in from out-of-town, but I wished that we could all be there.

### RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, receiving House Messages, and receiving Enrolled Bill Reports and Amendments, and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

**In recess to the Call of the Chair.**

**Out of Recess.**

### HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 64**, establishing a commission to study the creation of an integrated criminal justice information system and any issues related to the privacy, security, and dissemination of such criminal justice information.

**HB 66-FN**, relative to executive agency rulemaking authority.

**HB 69**, relative to the reinstatement of expired licenses for architects.

**HB 75**, relative to timber harvesting.

**HB 76**, relative to neighborhood electric vehicles.

**HB 79**, relative to the regulation of the installation and servicing of fire suppression systems.

**HB 86**, relative to the membership of the permissible fireworks review committee.

**HB 91**, relative to the telecommunications planning and development initiative and advisory committee.

**HB 99**, relative to absentee ballot requests.

**HB 101**, relative to qualifications for state offices.

**HB 108**, relative to the adoption of an optional veterans' property tax credit.

**HB 126**, relative to posting statutes at polling places.

**HB 127**, establishing a committee to study the effectiveness and fairness of county government.

**HB 131**, relative to enforcement of negotiable instruments under Article 3 of the Uniform Commercial Code.

**HB 132**, relative to state scholarships for orphans of veterans.

**HB 151**, authorizing the county convention to contract and fund performance audits of county departments.

**HB 166**, relative to employees of the New Hampshire retirement system.

**HB 172**, extending the committee to study the exemption from property taxes for not-for-profit hospitals, and including a study of the community benefit law.

**HB 173**, making technical corrections relative to the exception from the meals and rooms tax for gratuities.

**HB 223**, relative to the temporary removal of inmates.

**HB 231**, requiring the department of education to develop a plan to address and reduce the number of persons awaiting vocational rehabilitation transition services.

**HB 233**, relative to the nuclear planning and response program.

**HB 246**, relative to availability of absentee voting applicant lists.

**HB 253**, relative to the design build concept for certain projects.

**HB 260**, relative to checklists used on election day.

**HB 263**, establishing an oversight committee to review the allocation of funds disbursed for the developmental disabilities waitlist.

**HB 270**, relative to issuing drivers' licenses to aliens temporarily residing in the state.

**HB 271**, relative to walking disability plates and placards.

**HB 295**, relative to information filed with the regional planning commissions.

**HB 305**, relative to time allowed for voting.

**HB 310**, establishing a commission to study child support issues.

**HB 321**, relative to ordinary and accidental death benefits in the city of Manchester employees contributory retirement system.

**HB 327**, establishing a committee to study the use of state vehicles.

**HB 336-Local**, relative to the development and adoption of the school administrative unit budget.

**HB 343**, establishing a boundary commission to determine the boundary between New Hampshire and Maine.

**HB 419**, establishing a committee to study issues related to the management of railroads operating with leases on state property.

**HB 435**, relative to certificates of registration upon transfer of a vehicle.

**HB 436**, relative to the acquisition of Connecticut Valley Electric Company and electric utility restructuring.

**HB 477**, establishing certain speed limits.

**HB 485**, relative to the membership on the invasive species committee.

**HB 497**, relative to inactive status licenses.

**HB 498**, relative to 20-day vehicle registrations.

**HB 499**, expanding opportunities for teacher certification.

**HB 502**, establishing a committee to study options for reducing the impact of exhaust emissions from diesel engines in New Hampshire.

**HB 560**, relative to penalties for operating an aircraft while under the influence of alcohol or drugs and making a technical correction.

**HB 561**, repealing the Uniform Aircraft Financial Responsibility Act.

**HB 571-FN-L**, relative to Old Newport Road and the end of Main Street in the town of Marlow.

**HB 678-FN**, relative to penalties for operation of OHRVs after suspension of driving privileges for certain motor vehicle offenses.

**HB 802-FN-A**, encouraging the department of transportation to retrofit a highway rest stop to be a solar powered facility.

**HB 833-Local**, relative to Shaker Road and Bay Hill Road in the town of Northfield.

**HB 834-Local**, relative to River Road and Nimble Hill Road in the town of Newington.

**HCR 5**, urging Congress to permit satellite television subscribers to select in-state broadcast signals.

**HCR 8**, urging the United States Congress to improve the prescription drug program provided to veterans.

### INTRODUCTION OF HOUSE BILLS

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **64 – HCR 8** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 64**, establishing a commission to study the creation of an integrated criminal justice information system and any issues related to the privacy, security, and dissemination of such criminal justice information. (Executive Departments and Administration)

**HB 66-FN**, relative to executive agency rulemaking authority. (Executive Departments and Administration)

**HB 69**, relative to the reinstatement of expired licenses for architects. (Executive Departments and Administration)

**HB 75**, relative to timber harvesting. (Energy and Economic Development)

**HB 76**, relative to neighborhood electric vehicles. (Transportation)

**HB 79**, relative to the regulation of the installation and servicing of fire suppression systems. (Executive Departments and Administration)

**HB 86**, relative to the membership of the permissible fireworks review committee. (Public Affairs)

**HB 91**, relative to the telecommunications planning and development initiative and advisory committee. (Energy and Economic Development)

**HB 99**, relative to absentee ballot requests. (Internal Affairs)

**HB 101**, relative to qualifications for state offices. (Internal Affairs)

**HB 108**, relative to the adoption of an optional veterans' property tax credit. (Ways and Means)

**HB 126**, relative to posting statutes at polling places. (Internal Affairs)

**HB 127**, establishing a committee to study the effectiveness and fairness of county government. (Public Affairs)

**HB 131**, relative to enforcement of negotiable instruments under Article 3 of the Uniform Commercial Code. (Banks)

**HB 132**, relative to state scholarships for orphans of veterans. (Education)

**HB 151**, authorizing the county convention to contract and fund performance audits of county departments. (Public Affairs)

**HB 166**, relative to employees of the New Hampshire retirement system. (Executive Departments and Administration)

**HB 172**, extending the committee to study the exemption from property taxes for not-for-profit hospitals, and including a study of the community benefit law. (Ways and Means)

**HB 173**, making technical corrections relative to the exception from the meals and rooms tax for gratuities. (Ways and Means)

**HB 223**, relative to the temporary removal of inmates. (Executive Departments and Administration)

**HB 231**, requiring the department of education to develop a plan to address and reduce the number of persons awaiting vocational rehabilitation transition services. (Education)

**HB 233**, relative to the nuclear planning and response program. (Energy and Economic Development)

**HB 246**, relative to availability of absentee voting applicant lists. (Internal Affairs)

**HB 253**, relative to the design build concept for certain projects. (Transportation)

**HB 260**, relative to checklists used on election day. (Internal Affairs)

**HB 263**, establishing an oversight committee to review the allocation of funds disbursed for the developmental disabilities waitlist. (Executive Departments and Administration)

**HB 270**, relative to issuing drivers' licenses to aliens temporarily residing in the state. (Transportation)

**HB 271**, relative to walking disability plates and placards. (Transportation)

**HB 295**, relative to information filed with the regional planning commissions. (Internal Affairs)

**HB 305**, relative to time allowed for voting. (Internal Affairs)

**HB 310**, establishing a commission to study child support issues. (Public Affairs)

**HB 321**, relative to ordinary and accidental death benefits in the city of Manchester employees contributory retirement system. (Executive Departments and Administration)

**HB 327**, establishing a committee to study the use of state vehicles. (Transportation)

**HB 336-Local**, relative to the development and adoption of the school administrative unit budget. (Education)

**HB 343**, establishing a boundary commission to determine the boundary between New Hampshire and Maine. (Interstate Cooperation)

**HB 419**, establishing a committee to study issues related to the management of railroads operating with leases on state property. (Transportation)

**HB 435**, relative to certificates of registration upon transfer of a vehicle. (Transportation)

**HB 436**, relative to the acquisition of Connecticut Valley Electric Company and electric utility restructuring. (Energy and Economic Development)

**HB 477**, establishing certain speed limits. (Transportation)

**HB 485**, relative to the membership on the invasive species committee. (Wildlife and Recreation)

**HB 497**, relative to inactive status licenses. (Transportation)

**HB 498**, relative to 20-day vehicle registrations. (Transportation)

**HB 499**, expanding opportunities for teacher certification. (Education)

**HB 502**, establishing a committee to study options for reducing the impact of exhaust emissions from diesel engines in New Hampshire. (Environment)

**HB 560**, relative to penalties for operating an aircraft while under the influence of alcohol or drugs and making a technical correction. (Transportation)

**HB 561**, repealing the Uniform Aircraft Financial Responsibility Act. (Transportation)

**HB 571-FN-L**, relative to Old Newport Road and the end of Main Street in the town of Marlow. (Transportation)

**HB 678-FN**, relative to penalties for operation of OHRVs after suspension of driving privileges for certain motor vehicle offenses. (Wildlife and Recreation)

**HB 802-FN-A**, encouraging the department of transportation to retrofit a highway rest stop to be a solar powered facility. (Transportation)

**HB 833-Local**, relative to Shaker Road and Bay Hill Road in the town of Northfield. (Transportation)

**HB 834-Local**, relative to River Road and Nimble Hill Road in the town of Newton. (Transportation)

**HCR 5**, urging Congress to permit satellite television subscribers to select in-state broadcast signals. (Interstate Cooperation)

**HCR 8**, urging the United States Congress to improve the prescription drug program provided to veterans. (Public Affairs)

**HOUSE MESSAGE**

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 61**, relative to the taking of migratory game birds in the Connecticut River zone.

**HB 82**, to change the name of "Mount Clay" to Mount Reagan.

**HB 120**, relative to sessions for the correction of the checklist and sessions for changes of party registration.

**HB 149**, relative to patient rights and disclosures.

**HB 156**, relative to weights and measures.

**HB 181**, relative to limiting landowner liability for giving permission for horseback riding.

**HB 182**, relative to unclaimed shares and advancements to heirs.

**HB 183**, relative to a distribution from a decedent's estate to a minor.

**HB 275**, establishing a committee to study ballot reform.

**HB 277-FN**, relative to an extended term of imprisonment for manslaughter and relative to jury findings which warrant an extended term of imprisonment.

**HB 281-FN**, exempting automatic irrigation system installers from licensure by the electrician's board.

**HB 326**, relative to establishing a 6-year capital budget.

**HB 356-FN**, relative to including medical benefits costs in the purchase of creditable service in the retirement system.

**HB 358-FN-L**, relative to recount fees in local elections.

**HB 379**, relative to penalties for OHRV violations by underage operators.

**HB 387-FN**, allowing free admission to the state park system for certain members of the New Hampshire national guard.

**HB 434-L**, relative to junkyards and motor vehicle recycling yards.

**HB 469**, relative to areas of the state for hunting by crossbow.

**HB 533**, relative to health carrier disclosure for medical child support enforcement.

**HB 591-FN**, allowing a certain former state employee to apply for accidental disability benefits.

**HB 658-FN**, relative to impersonation of candidates.

**HB 669-FN**, relative to dental insurance benefits and eligibility for medical benefits for retired state employees.

**HB 703-FN**, permitting free admission to the state park system for disabled veterans.

**HB 732-FN**, relative to fines for forestry law violations, and deceptive forestry business practices.

**HB 733-FN**, relative to drivers' licenses held by members of the national guard or military reserve.

**HB 745**, relative to voters presenting identification to obtain a ballot.

**HB 769**, relative to the lighting of certain advertising devices along highways.

**HB 791-FN-A**, establishing a rest area and state liquor store retail opportunities commission.

**HB 819**, relative to original and youth operators' licenses.

**HB 828-FN-A-L**, establishing a committee to study the effect of alternative transportation on state revenues.

**HB 831**, establishing a New Hampshire end-of-life care study commission.

**HCR 9**, urging the President and the Joint Chiefs of Staff to abandon the Total Information Awareness Initiative.

### INTRODUCTION OF HOUSE BILLS

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **61- HCR 9** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 61**, relative to the taking of migratory game birds in the Connecticut River zone. (Wildlife and Recreation)

**HB 82**, to change the name of "Mount Clay" to Mount Reagan. (Wildlife and Recreation)

**HB 120**, relative to sessions for the correction of the checklist and sessions for changes of party registration. (Internal Affairs)

**HB 149**, relative to patient rights and disclosures. (Public Institutions, Health and Human Services)

**HB 156**, relative to weights and measures. (Wildlife and Recreation)

**HB 181**, relative to limiting landowner liability for giving permission for horseback riding. (Wildlife and Recreation)

**HB 182**, relative to unclaimed shares and advancements to heirs. (Insurance)

**HB 183**, relative to a distribution from a decedent's estate to a minor. (Banks)

**HB 275**, establishing a committee to study ballot reform. (Internal Affairs)

**HB 277-FN**, relative to an extended term of imprisonment for manslaughter and relative to jury findings which warrant an extended term of imprisonment. (Judiciary)

**HB 281-FN**, exempting automatic irrigation system installers from licensure by the electrician's board. (Executive Departments and Administration)

**HB 326**, relative to establishing a 6-year capital budget. (Capital Budget)

**HB 356-FN**, relative to including medical benefits costs in the purchase of creditable service in the retirement system. (Insurance)

**HB 358-FN-L**, relative to recount fees in local elections. (Internal Affairs)

**HB 379**, relative to penalties for OHRV violations by underage operators. (Transportation)

**HB 387-FN**, allowing free admission to the state park system for certain members of the New Hampshire national guard. (Wildlife and Recreation)



**HB 434-L**, relative to junkyards and motor vehicle recycling yards. (Transportation)

**HB 469**, relative to areas of the state for hunting by crossbow. (Wildlife and Recreation)

**HB 533**, relative to health carrier disclosure for medical child support enforcement. (Public Institutions, Health and Human Services)

**HB 591-FN**, allowing a certain former state employee to apply for accidental disability benefits. (Insurance)

**HB 658-FN**, relative to impersonation of candidates. (Internal Affairs)

**HB 669-FN**, relative to dental insurance benefits and eligibility for medical benefits for retired state employees. (Insurance)

**HB 703-FN**, permitting free admission to the state park system for disabled veterans. (Wildlife and Recreation)

**HB 732-FN**, relative to fines for forestry law violations, and deceptive forestry business practices. (Energy and Economic Development)

**HB 733-FN**, relative to drivers' licenses held by members of the national guard or military reserve. (Finance)

**HB 745**, relative to voters presenting identification to obtain a ballot. (Internal Affairs)

**HB 769**, relative to the lighting of certain advertising devices along highways. (Transportation)

**HB 791-FN-A**, establishing a rest area and state liquor store retail opportunities commission. (Executive Departments and Administration)

**HB 819**, relative to original and youth operators' licenses. (Transportation)

**HB 828-FN-A-L**, establishing a committee to study the effect of alternative transportation on state revenues. (Transportation)

**HB 831**, establishing a New Hampshire end-of-life care study commission. (Public Institutions, Health and Human Services)

**HCR 9**, urging the President and the Joint Chiefs of Staff to abandon the Total Information Awareness Initiative. (Interstate Cooperation)

### **REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill:

**HB 171**, establishing a commission to assess the operating efficiency of state government.

Senator D'Allesandro moved adoption.

**Adopted.**

### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in its amendment(s) to the following entitled Bill(s) sent down from the Senate:

**HB 517-L**, relative to the classification of certain roads in the town of Hillsborough and transferring ownership of any residual interest in a certain parcel of property from the state to the city of Keene.

**LATE SESSION**

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*March 20, 2003*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good Morning. This is a tough day. There are lots of feelings all around. We must be careful what we say and what we pray. Here is what I would say and what I would pray. We should all hate war, even if it becomes necessary. And as a people now at war, we must remember the words of William Temple, Archbishop of Canterbury during the Second World War. "We are called to the hardest of all tasks; to fight without hatred, to resist without bitterness, and in the end, if God grants it so, to triumph without vindictiveness or arrogance." This is a somber day, for lives – precious and unique – are at risk. So let us pray this morning for the leaders, for the soldiers, for the civilians – and most of all, for the children.

This is the prayer of Saint Francis:

*Lord, make us instruments of Your peace.*

*Where there is hatred, let us sow love;*

*Where there is injury, pardon;*

*Where there is discord, union;*

*Where there is doubt, faith;*

*Where there is despair, hope;*

*Where there is darkness, light;*

*Where there is sadness, joy.*

*Grant that we may not so much seek to be consoled as to console;*

*To be understood as to understand;*

*To be loved, as to love.*

*For it is in giving that we receive;*

*It is in pardoning that we are pardoned;*

*And it is in dying that we are born to life eternal.*

*Amen.*

Senator Roberge led the Pledge of Allegiance.

Senator Prescott is excused for the day.

**INTRODUCTION OF GUESTS**

SENATOR EATON (In the Chair): I received a call from Senator Prescott this morning that his father was very, very serious, that he was going in for an operation. I just received word that he passed away this morning. If we could stand up for a moment of silence. We wish Senator Prescott and his family well. Thank you.

**MOTION TO VACATE**

Senator Roberge moved to vacate **HB 310**, establishing a commission to study child support issues, from the Public Affairs Committee to the Judiciary Committee.

**Adopted.**

**HB 310 is vacated to the Judiciary Committee.**

**MOTION TO VACATE**

Senator Green moved to vacate **SB 160-FN-A**, making a capital appropriation to continue construction of the vocational center in Nashua, from the Finance Committee to the Capital Budget Committee.

**Adopted.**

**SB 160-FN-A is vacated to the Capital Budget Committee.**

**MOTION TO AMEND THE RULES**

Senator Clegg moved to amend New Hampshire Senate Rule #24 by changing the required notice from five days to four days. The relevant sentence in New Hampshire Senate Rule #24 shall read:

“A hearing shall be held upon each bill referred to a committee, and notice of such hearing shall be advertised at least four (4) days before hearing in the Senate Calendar”.

**Adopted by the necessary 2/3 vote.**

**RESOLUTION**

Senator Gatsas offered the following Resolution:

**SENATE RESOLUTION     1**

**A RESOLUTION**     recognizing that the ancient Macedonians were Hellenes, and that the inhabitants of Macedonia today are their Hellenic descendants and part of the northern province of Greece, Macedonia.

**SPONSORS:**             Sen. Gatsas, Dist 16; Sen. D’Allesandro, Dist 20

**COMMITTEE:**

**ANALYSIS**

This senate resolution recognizes that the ancient Macedonians were Hellenes, and that the inhabitants of Macedonia today are their Hellenic descendants and part of the Northern province of Greece, Macedonia.

03-1169

09/01

**STATE OF NEW HAMPSHIRE**

*In the Year of Our Lord Two Thousand Three*

**A RESOLUTION**     recognizing that the ancient Macedonians were Hellenes, and that the inhabitants of Macedonia today are their Hellenic descendants and part of the northern province of Greece, Macedonia.

Whereas, Philip of Macedonia, his son, Alexander the Great, and his tutor, the philosopher Aristotle, were born and raised in the northern province of Greece, Macedonia; and

Whereas, the language and culture of the ancient Macedonians, the ancestors of the inhabitants of northern Greece today, were Hellenic; and

Whereas, the Macedonians, like the rest of the Hellenes in antiquity, believed in the 12 gods of Olympus and participated with their fellow Hellenes in the Olympic Games; and

Whereas, Pella, the palace where Alexander the Great was born, and Vergina, the burial site of the Macedonian kings, are all located in northern Greece; now, therefore, be it

Resolved by the Senate:

That the New Hampshire senate recognizes that the ancient Macedonians were Hellenes, and that the inhabitants of Macedonia today are their Hellenic descendants and part of the northern province of Greece, Macedonia; and

That the history of ancient Macedonia has been Hellenic for 3,000 years and continues to be so today; and

That copies of this resolution be forwarded by the senate clerk to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the New Hampshire congressional delegation.

SENATOR GATSAS: Thank you Mr. President. I move the introduction and consideration at the present time of SR 1, recognizing that the ancient Macedonians were Hellenes, and that the inhabitants of Macedonia today are their Hellenic descendants and part of the northern province of Greece, Macedonia.

SENATOR D'ALLESANDRO: Thank you so much Mr. President. This is one of the times of my life when my compatibility with Senator Gatsas is just magnificent. We have a synergy that brings us together from our ancient beginnings. Certainly as a teacher of history, one talked about the magnificence of Philip of Macedon and his triumph in terms of uniting the Macedonians, Hellenes and producing his great son, Alexander the Great who went on to conquer the world. The history of Greece is intertwined with Philip of Macedon and Alexander the Great. The greatness of the Greek society, which enveloped the entire civilized world at one time, is again a manifestation of what began in Macedonia and flowed through the continent, flowed through the peninsula and through the victories of Alexander the Great, throughout the civilized world. So it is with a great deal of positive emotion that I support this resolution and support my colleague Senator Gatsas who certainly manifests that great Greek tradition in our city of Manchester and here in the New Hampshire State Senate. There are a number of wonderful Greeks who are here with us and of course the Italians actually embellished the Greek tradition by taking the Roman empire and again being the champions of the world, so we thank the Greeks for bringing forth that desire and the great keys to success. We owe it all to Philip of Macedon and it is a great historical day for here in New Hampshire, and a great historical day for the Greeks. We certainly do appreciate the willingness of Senator Gatsas to bring this forward. Thank you. Mr. President.

SENATOR LARSEN: I, too rise in support of the resolution, while I am not a historian and do not know Greek history perhaps as well, although I did have ancient history years and years ago, I do recognize the importance of having what is a beautiful country and beautiful people, having visited it a couple of summers ago. I recognize the importance of unity among the Greeks. If this resolution in fact, works to promote unity and strengthen their country, then it is obviously a good resolution and one which all of us in New Hampshire recognize the many descendants of Greeks who live in this state and recognize the importance of encouraging their unity with their country, their homeland. So I believe that SR 1 is a good resolution and one which we should support.

SENATOR GATSAS: Thank you Mr. President. Greek Independence Day is Tuesday. I think that everybody understands that Monday was a day of Green, Senator Green, Saint Patrick's day. I think that it is important that we all recognize our history and our ancient history of the countries

that we love and are dear to our hearts. I am proud of being a Greek descendent and I think that we should not lose sight of what this resolution says. I know that the colleagues in the Senate have understood how many Greek descendents they have in their communities, and if they haven't, I think that we could probably get the rest of them to send them e-mails and send them letters, but I brought father Peter with us today. Father Peter is from Concord and I thought that it was important to bring him. Also with some of the other fellow Greeks that are from Macedonia and also Greece. I wish that they could take a stand, an applause, I would appreciate it. I urge your support on this resolution. Thank you Mr. President.

**Adopted.**

### RESOLUTION

Senator Boyce offered the following Resolution:

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03-1214  
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### SENATE RESOLUTION     **3**

A RESOLUTION     supporting the United States troops in Iraq.

SPONSORS:     Sen. Boyce, Dist 4; Sen. Barnes, Dist 17; Sen. Clegg, Dist 14; Sen. Eaton, Dist 10; Sen. Flanders, Dist 7; Sen. Gallus, Dist 1; Sen. Gatsas, Dist 16; Sen. Green, Dist 6; Sen. Johnson, Dist 2; Sen. Kenney, Dist 3; Sen. Martel, Dist 18; Sen. Morse, Dist 22; Sen. O'Hearn, Dist 12; Sen. Odell, Dist 8; Sen. Peterson, Dist 11; Sen. Prescott, Dist 23; Sen. Roberge, Dist 9; Sen. Sapareto, Dist 19

COMMITTEE:

### ANALYSIS

This resolution expresses the support of the senate for the President, the men and women of the armed forces, and their families for their efforts in the Iraq conflict.

03-1214  
03/10

### STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Three*

A RESOLUTION     supporting the United States troops in Iraq.

Whereas, the United States has worked with the United Nations the 12 years following the Persian Gulf War in 1991 to peacefully disarm Saddam Hussein and the government of Iraq; and

Whereas, United Nations' Resolution 1441 was unanimously passed by the Security Council on November 8, 2002, finding Iraq in material breach of its obligations, and vowing serious consequences if they did not fully and immediately disarm; and

Whereas, the President of the United States, with the authorization of Congress, has ordered military action against the government of Iraq in an effort to address the threat Iraq poses to peace and stability of the country, the region, and the world; and

Whereas, hundreds of men and women who serve in the New Hampshire reserves and National Guard have been called to active duty; and

Whereas, these men and women have joined with other New Hampshire members of the United States armed forces and members of the multinational forces assembled against this threat; and

Whereas, the families of these men and women play an important role in providing support to them; now, therefore, be it

Resolved by the Senate:

That the senate of the state of New Hampshire supports the efforts and the leadership of the President as Commander-in-Chief in the current hostilities; and

That the senate of the state of New Hampshire supports the men and women of our armed forces who are carrying out their missions with professional excellence, dedicated patriotism, and exemplary bravery; and

That the senate of the state of New Hampshire commends the families of these men and women for their strength during this time of conflict.

SENATOR BOYCE: I rise to ask that we bring forth this resolution supporting the troops in Iraq. I ask for your support.

**Recess.**

**Out of recess.**

SENATOR KENNEY: I rise to urge support of this resolution. Two years ago in the House, we passed a ten-year resolution for Persian Gulf veterans, and that was to commend the Persian Gulf veterans for their service to the nation, ten years ago, two years ago. We had a group of military people who represented all of the branches of the services, that was to recognize their efforts to liberate Kuwait. It is unfortunate that we have to go to war again 12 years after the fact, and we are indeed going to have a new generation of Persian Gulf veterans. Again, that is unfortunate. But we also understand that this resolution is important to the morale of our troops. That in 1990-1991 the President of the United States was George Bush. When I got promoted to Major, President Clinton signed that promotion warrant. So when a President executes the authority to go to war, we as a nation, as a state, should get behind the President in the efforts because we are sending a signal to the troops that the state of New Hampshire and the United States of America supports you in this arduous endeavor. I really want to let you know from my personal experience, that the communication today gets to the front-line troops very quickly, through radio, through e-mail, through newspapers, through their commanding officers, so what we are to do today is going to affect those front-line troops. They are going to say that the people back home, the state of New Hampshire, support us and they are going to know that in a relatively short period of time. So I would just encourage the Senate to pass this resolution, to make sure that we send a strong signal to these young men and women, that we support them in their endeavors though we might disagree why they are going, but we need to support them. Thank you Mr. President.

SENATOR COHEN: Thank you Mr. President. Why are we all here? We are all here for our constituents. We all represent one twenty-fourth of the state of New Hampshire, but together we speak for the people of New Hampshire, for the citizens. We all recognize...I don't know about you, but I have been talking to a lot of people lately who have friends and relatives and sons and daughters who are now in the Gulf. That is a fact. We see their pictures, we know who they are. Obviously there has

been a lot of public discussion about the policy across the nation as well as in New Hampshire, but what we are about today, saying we support the people of New Hampshire, the citizens who are doing their jobs and putting themselves in harms way. We are here about unity for our troops, the men and women who are over there. It is important that we speak to the safety of those troops and our concern for them, and that is what our citizens, the people of New Hampshire are going to hear from us. Thank you.

SENATOR SAPARETO: Thank you Mr. President. I would like to take it one step further and also reaffirm the faith that we have in the leadership of those troops because their lives depend on that leadership and that strong leadership, and that is why we need to support our President and the chain of command along with those troops to ensure their safety and show them that we are fully behind them in all of their endeavors and that goes all the way up to the chain of command and that is who I support and that is why I support our President.

### PARLIAMENTARY INQUIRY

SENATOR BARNES: I would like to ask a parliamentary inquiry.

SENATOR EATON (In the Chair): State your inquiry.

SENATOR BARNES: How long are we going to wait for Senators Larsen and Below to come back into this chamber before we vote?

SENATOR EATON (In the Chair): We will give them courtesy of another minute or two.

SENATOR BARNES: Perhaps they don't wish to vote, I don't know, but they have had five to seven minutes tying up the business of the chamber.

SENATOR D'ALLESANDRO: Thank you Mr. President. Senator Barnes, I think that Senator Larsen went out to find Senator Below. They have every interest in voting. I apologize for the inconvenience, but they do want to vote.

SENATOR BARNES: But don't we have a rule that when a Senator leaves the floor that they let the Sergeant-at-Arms know where they are, isn't that why the Sergeant-at-Arms is here, Senator, so that he can go and get individuals when we have a vote? I believe that is what the rules of the Senate call for the Sergeant-at-Arms to do.

SENATOR D'ALLESANDRO: I don't want to get into a combative situation. I appreciate your concern, Senator Barnes. I think that Senator Larsen, out of courtesy to Senator Below, went to look for him. To me, I think that was the right thing to do, because it was a roll call. We were in a matter of little confusion because we were in a recess and we did come back. So if the rules or the protocol of the Senate weren't fully adhered to, I apologize for that and we should have taken advantage of that, but by all means we want everybody here – it is an important situation. I know that every Senator wants to cast a vote. Thank you.

### PARLIAMENTARY INQUIRY

SENATOR CLEGG: Parliamentary question. Is it true that currently we are in a voting mode, and that no further discussion can take place on the resolution?

SENATOR EATON (In the Chair): The roll call has not been started.

SENATOR CLEGG: I disagree with you.

## TAPE INAUDIBLE.

Question is on the adoption of the Resolution.

A roll call was requested by Senator Barnes.

Seconded by Senator Sapareto.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Peterson, O'Hearn, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Estabrook, Morse, Cohen.

The following Senators voted No: None

Yeas: 22 - Nays: 0

Adopted.

## COMMITTEE REPORTS

SB 55-FN, raising the age at which a child may terminate his or her public education. Education Committee. Ought to pass with amendment, Vote 2-0. Senator O'Hearn for the committee.

Senate Education

March 13, 2003

2003-0710s

04/10

## Amendment to SB 55-FN

Amend the bill by replacing sections 2-4 with the following:

2 Pupils; Compulsory Attendance. Amend RSA 193:1, IV to read as follows:

IV. ~~[Any]~~ ***Notwithstanding any provision of law to the contrary, any child [at least 16] under 18 years of age [and under 18 years of age] who has not attained sufficient credit to receive a high school diploma or its equivalent, and*** who wishes to terminate such child's public or nonpublic education prior to graduating from high school shall do so only after a conference with the principal, or designee. ***A school district shall develop a policy to permit withdrawal under this paragraph.*** The principal shall request a conference with the parent, guardian, or other custodian. Written approval of withdrawal must be received from such child's parent, guardian, or other person residing in the state and having custody or charge of such child. The written approval shall be dated and the signature witnessed by the principal of the school where the child is in attendance, or the principal's designee.

3 Truant Officers; Duties. Amend RSA 189:36 to read as follows:

189:36 Duties. Truant officers shall, when directed by the school board, enforce the laws and regulations relating to truants and children ~~[between the ages of 8]~~ ***at least 6 years of age*** and ~~[16]~~ ***under 18 years of age*** not attending school and without any regular and lawful occupation; and the laws relating to the attendance at school of children ~~[between the ages of 8]~~ ***at least 6 years of age*** and ***under 18 years of age***; and shall have authority without a warrant to take and place in school any children found employed contrary to the laws relating to the employment of children, or violating the laws relating to the compulsory attendance at school of children under the age of 18 years, and the laws relating to child labor.

4 Pupils; Bylaws as to Nonattendance. Amend RSA 193:16 to read as follows:

193:16 Bylaws as to Nonattendance. Districts may make bylaws, not repugnant to law, concerning habitual truants and children ~~[between the~~



~~ages of~~ **at least 6 years of age** and ~~[16]~~ **under 18 years of age** not attending school and not having a regular and lawful occupation, and to compel the attendance of such children at school; failure to comply with such bylaws shall constitute a violation for each offense.

SENATOR O'HEARN: Thank you Mr. President. I move SB 55 ought to pass with amendment. During my days as a teacher, I remember one of the most difficult experiences I had was an eighth grader of mine that wanted to drop out and how difficult it was to find someone to talk to him that would convince him to stay in school. Now mind you that this is someone without even an eighth grade education. New Hampshire dropout rates are unacceptable. At twenty-five percent last year, that doesn't even count the eight graders or junior high kids. I am also a co-sponsor of HB 619, Jobs for NH Graduates, which expands opportunities for dropout prevention and dropout recovery. This is a program that we know works. This legislation attempts to keep children in school while giving school districts local control. Any student that is under the age of eighteen and has not attained a high school diploma or its equivalent may terminate their education after a meeting with the principal or his designee; however, school districts must develop a policy to allow that withdrawal of a student. This allows communities to exempt students for their specific need or their specific reason. It allows communities to take control of something that needs to be taken control of, allowing children to drop out of school. I ask that you support this legislation to keep New Hampshire's children in school while not leaving the process of withdrawal a decision left...while leaving the process of withdrawal left as a local district decision. The Education Committee asks for your support on ought to pass as amended, and I ask after this is passed that there will be a floor amendment coming out to deal with the email and the letters that you got on our home schoolers. That floor amendment will address that need and exempt them. Thank you Mr. President.

SENATOR BOYCE: I rise to oppose both the amendment and the bill. I believe that this is the wrong method to try and improve the deplorable situation of dropouts across the state. I don't think that the New Hampshire way to convince somebody to do something like stay in school is to compel them to do something like stay in school. I think that the New Hampshire way would be to find a way to make them want to stay in school. Senator O'Hearn mentioned another bill that seeks to do that. I think that is a much better method to address the situation. We have a problem, the solution is not to force people to do something that they have not been convinced to do. It is the same thing that we do with the seatbelt law. We don't have a seatbelt law because we believe that we can convince people to wear their seatbelts because they should, because it is the right thing to do, because it is the intelligent thing to do. We don't compel them to wear seatbelts. We have other situations in the state, motorcycle helmets, several other things where we give people the right to make their own choice and then hope that we can convince them to make the right choice. I think that this bill is wrong because of that. I think that is not the New Hampshire way. Thank you.

SENATOR FOSTER: I support ought to pass as amended. An education may be the most important thing that a parent can give his children and its society can give a child. Every campaign season we hear about how important education is. We know that it is difficult, if not impossible, to get a good job without a high school education. To leave school today without that degree is almost certain to lead to a life of poverty, yet we

allow, in fact, I would say, we empower our children to drop out at age 16. Ironically, we don't do a lot of other things. We make our kids drive for the first 90 days of their license with somebody else because they are children. Kids who are 16 years of age can't vote because they are children. They can't serve in the military because they are children and in fact I understand that they may not be able to serve at all if they don't get a high school degree. They can't drink because they are children. Yes, we make our children wear seatbelts because they are children, yet they can drop out, and because they can, many do. They check out of school knowing they will be able to, when they turn age 16 and leave. The legislation in my opinion, is a really good compromise. It raises the age of...presumptive age to age 18 or until you get a high school degree, but allows local school districts to develop their own particular policies to permit children to drop out earlier if that child wishes to. That policy can be as liberal or as tough as the local school district wants it to be. Local control is honored by this bill. Please support the committee amendment and the bill. Thank you.

SENATOR D'ALLESANDRO: Thank you very much Mr. President. I rise in support of the bill. As a former teacher, I might say that one of the most difficult things was talking to a student who was preparing to drop out of school. The magic age was 16. You would meet with that student, discuss the possibilities and the probabilities if they didn't finish school, tell them the difference between a person with a high school diploma and a non-high school diploma in terms of their ability to earn an income. There were times when you could succeed, but there were times when you couldn't succeed. We have spent an enormous amount of energy crafting an education policy for this state that provides every student with an adequate education. As a youngster, I was told by my parents, who were uneducated, my mother never got out of high school...the proudest thing in my father's life was the fact that he graduated from East Boston High School, Class of 1928. He wanted to go to college but wasn't afforded that opportunity. His father had passed away and he was one of seven children and he had to go out and earn a living. He had to support his family. But the emphasis to me was, the only way that you are going to succeed in this life is to get an education and to pursue that education and to pursue it with every effort that you could. I was fortunate, I had a number of people who helped me. Who counselled me to go forward. As a teacher in Manchester, what I found was that many of the parents of students that I have taught, were pushing them out the door at 16 to get a job because there was an available job at Seal Tanning or there was an available job at the Waumbec Mill or there was an available job in Manchester, and it was so important because you had to support the family, never realizing that those kids would have no future when Seal Tanning closed. When the Waumbec Mill closed, and when there weren't those menial jobs. So this bill provides an opportunity for us to keep those kids in school. We want to fight the dropout rate. We worked diligently to fight the dropout rate. This allows for the age to go from 16 to 18. **TAPE CHANGE** possibly. But at 18, at least we are giving a better opportunity for success. We want every kid to succeed. This provides that opportunity. And at the local level, we can make decisions about counselling and about how to deal with these potential dropouts. I think that it is a good piece of legislation. It takes into consideration what is happening in the real world today and it provides a better opportunity for our young people. Thank you Mr. President.

SENATOR BARNES: Senator D'Allesandro, are you aware of the JAG Program?

SENATOR D'ALLESANDRO: Yes.

SENATOR BARNES: Could you give the Senate a little background? I have heard of it, I have dealt with it a little in Raymond, but I don't have the background, but I have a hunch that you may have. Would you tell us about that and what that is doing for the dropout rate?

SENATOR D'ALLESANDRO: Thank you Senator Barnes. As I understand it, youngsters who do drop out are brought back in. They are given special consideration. They work with them in terms of tailoring a curriculum that fits these students and give them the kind of counselling and tutoring that they need and bring them forward so that they do eventually get a high school diploma. It is a very successful program. It is a worthwhile program. In Manchester, we have a program that is synonymous to it. It is called the "Pass Program". It is that extra effort that takes that kid and says you know, this is an opportunity and we are going to do everything that we can to provide you with that opportunity so that you will graduate from high school. Thank you Senator Barnes. Thank you Mr. President.

SENATOR FLANDERS: Thank you Mr. President, I rise to support this bill, mainly because I think of the attitude of a 16-year-old compared to the attitude of an 18-year-old. A lot of changes are made in those two years. Once a child leaves school at 16 years old, they are not going to go back. They may get a GED, but they are not going to go back. I think that it is the job of our schools and our teachers that if a 16-year-old is having a problem, is to mold that child and try to keep him in school and try to get him to the point of the education and the diploma from high school. But you let him go out the door at 16 and you have lost him. I think that we should try and keep these children in school. I think that the attitude think of when we were 16, and we were 18, and we were 20 – how did your outlook on life look? I think that we ought to try and keep these young men and women in school. Thank you very much.

SENATOR BARNES: Senator Flanders, would you believe that when I was 16 and thought of getting out of school, that my mother and father had a mother and father conversation with me, so I stayed there?

SENATOR FLANDERS: Senator Barnes, you were very lucky.

SENATOR LARSEN: I just rise to speak in support of this bill on Senate Education. We heard and discussed this in a fair amount...I would reinforce the words of Senator Foster when he said that our current law empowers 16-year-olds in a way that we don't empower what we consider children in so many other ways. This bill would empower school districts to look at their own unique situations, giving them local control to encourage 16-year-olds to remain in school in the ways that they feel is appropriate at their local levels. One of the biggest problems we heard with the bill was from home schooling individuals who felt that they could move their child through at a faster rate through the school program. I am understanding that a floor amendment is coming to correct that particular situation, so I think that we are in fact, resolving this issue the way that we often-times do best, which is returning local control where necessary. Thanks.

SENATOR O'HEARN: Thank you Mr. President. I am speaking a second time because I do believe that this is something that we owe our children. These kids are children. I believe that it is the duty of the leg-

islature to protect them, to encourage them, and yes, even require them to get the very minimum, a high school education. Almost a year ago, the Department of Education came out with their first cumulative report of the dropout rate. It was alarming. It was 25 percent. Almost as high as 40 percent in some school districts. I remind you that does not include our junior high kids that drop out that are 16. Last year, over 25,250 children dropped out. That is 10,000 kids from the class of 2003, dropping out before they finish high school. That cost is high. There is a loss of human productivity. A loss of an educated workforce. A cost to unemployment. A cost to welfare, and a cost to the criminal justice system. Teach school and you will find out that kids are in trouble and cause trouble at age eight, ten, twelve and fourteen. Why is sixteen the magic age to let them out? But we have laws that haven't been touched in 100 years, allowing a sixteen year old to drop out. One hundred years later, we should do something about it, to keep these children in school, require our schools to set a policy, require our kids to stay in school. We are told that children at risk can be identified as early as eight years old, and yet what are we doing about it? I ask that we make a statement today that education is important for every child, that a high school diploma is essential to every child. It is our goal in New Hampshire to make sure that every high school diploma is available to each and every child in our state. Thank you Mr. President.

SENATOR BARNES: Thank you very much Mr. President. Senator O'Hearn, I agree with just about everything that you have said and I have a question for you. Having just served a year and tonight is my last duty and it is such a shame that I am not on the school board anymore after tonight's recount...something that I have found that was very interesting and I have been concerned about the dropout rate for a long time, and as a businessman in my town I was very concerned about the dropout rate in Raymond. Raymond had supposedly one of the highest dropout rates in the state of New Hampshire. But what I found out when I got on the school board and I started asking about the dropout rate. I found out that the state and the towns did not have a standardized way of dropping out. In Raymond, I found out through the principal of the high school, that I think that the last time that they reported it, seventeen of those people who got reported as dropouts were students whose families moved to other towns. True the children dropped out of Raymond High School, but they enlisted over in Souhegan to probably help win that basketball championship. So my concern is dropout numbers, we can throw numbers all over the place, and you are throwing a 40 percent number out, I wonder if the state has finally come up with a dropout formula that coordinates with all of the school boards that we have in the state of New Hampshire, because of this past year, that wasn't happening.

SENATOR O'HEARN: Yes. The Department of Education has come out with a standardized dropout definition. It is a national definition so that we can compare ourselves with other states. It is a requirement that school districts keep records of students that transfer. Those records should follow the student, then the school district will know whether the child has transferred or actually dropped out. It is about time and I think that even the Finance Committee will recognize that it is time that our school districts kept better records so that we had better data to judge things on.

SENATOR BARNES: That is whole another ballgame, Senator. Good luck.

SENATOR O'HEARN: Thank you.

SENATOR SAPARETO: Thank you Mr. President. Senator am I correct in understanding that if you have a 15-year-old or a 16-year-old that has not completed a GED equivalent degree, that receives early acceptance to a university, may now not attend the university? Are there some school districts that may prohibit that student from matriculating to a university because they have not received an equivalent GED degree and they are not 18?

SENATOR O'HEARN: No, because the legislation says "or its equivalent". They have to have either a high school diploma or its equivalent.

SENATOR SAPARTEO: Thank you Senator. A follow up on that question then. So if someone does not have, again I repeat that, does not have, that degree, a 16-year-old student who does not have that degree or its equivalent, however, has been accepted, lets say to an Ivy League School, because of some other exemplary work or whatever, is not now able to matriculate because they do not have that equivalent degree?

SENATOR O'HEARN: Then your local school district can set the policy and make the determination locally if they can move on.

SENATOR BELOW: Thank you Mr. President. I was going to vote for this committee amendment so that we can get to the floor amendment and see what that says. I am concerned about the affect on families that home school, so I reserve a final judgement on the bill until we see the outcome of the floor amendment. Thank you Mr. President.

#### **TAPE INAUDIBLE**

**Question is on the adoption of the committee amendment.**

**A roll call was requested by Senator O'Hearn.**

**Seconded by Senator Sapareto.**

**The following Senators voted Yes: Johnson, Kenney, Below, Flanders, Odell, Peterson, O'Hearn, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Boyce, Green, Roberge, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse.**

**Yeas: 12 - Nays: 10**

**Amendment adopted.**

Senator O'Hearn offered a floor amendment.

Sen. O'Hearn, Dist. 12

**March 18, 2003**

**2003-0808s**

**04/10**

#### **Floor Amendment to SB 55-FN**

Amend the bill by replacing all after section 4 with the following:

5 School Districts; Approval of High Schools. Amend RSA 194:23-b, I to read as follows:

I. In order to satisfy compulsory school attendance laws, a high school student less than [16] 18 years old must attend a high school which has been approved by the state board of education as complying with the provisions of RSA 194:23, or its equivalent; and the state board of education shall annually publish a list of all high schools which it has approved as meeting the requirements of RSA 194:23.

6 Applicability; Home Educated Pupils. The provisions of this act shall not apply to children who are home schooled pursuant to a home edu-

cation plan established under RSA 193-A. The provisions of this act shall not be construed to alter, modify, or affect in any way the provisions of RSA 193-A.

7 Effective Date. This act shall take effect 60 days after its passage.  
**2003-0808s**

### AMENDED ANALYSIS

This bill raises from 16 to 18 the age at which a pupil may decide to terminate his or her public education, and provides an exemption for home educated pupils.

SENATOR O'HEARN: As we try to deal with some of these issues as the dropout, it came across from the home schoolers that they have to do plans every year for their students, and at age 16 they no longer have to do plans or at 16 these students have already reached a high school equivalency and are moving on. So what I have asked here is that our children that are home schooled, in an established home school program, be removed from this piece of legislation so that those programs can still continue without the interference of this law. The reason that I used "an established home school program" is because also part of the dropout problem is that when a student is expelled, often-times a parent will come in and say 'fine, I will home school them' and nothing ever happens, so this is just creating accountability to make sure our home school programs don't get designated as programs that don't work for our children because our home school programs are working and I certainly don't want to have it interfere with those programs. Thank you.

SENATOR ESTABROOK: Senator O'Hearn, I think that paragraph six accomplished what you seek, I support that. In paragraph one, where it says that "high school students less than 18 years old must attend a high school which has been approved". Doesn't that language take away some of the flexibility that the amendment printed in the calendar gives to local districts?

SENATOR O'HEARN: I don't believe so, I think this is just a clarification in the law. I think that it was a paragraph that was left out in the original, because the only thing that is being changed here is the age of 18.

SENATOR ESTABROOK: Yes and that is my point. By saying that someone under 18 must attend a high school, that is different than a student who wishes to terminate their education will be subject to local provisions. I think that here, we are tying the hands of local districts.

SENATOR O'HEARN: I am not sure if I agree with you, but if there is a concern, I would ask that we table this and correct the amendment.

SENATOR ESTABROOK: That would be fine. I am just concerned that it may not be accomplishing what your intent is, because I fully agree with your intent.

SENATOR O'HEARN: Thank you.

SENATOR GATSAS: Senator O'Hearn, I believe conceptually that the amendment I was hoping that it would have had something else in it, because I would believe that 16 to 18-year-olds being asked to attend school, without anything in it for them or anything that we're taking away from them, would either be a driver's license, that if they dropped out they would lose that, because the disruption that they could cause within a classroom could be horrific for the rest of the students. So I certainly believe that we need to find something that is going to enhance

the attendance, but children today, 16 to 18, need something taken away for them to understand that maybe we are trying to help them. So I would have hoped that this amendment would have had that carrot in it that we could have helped them stay in school, because without taking something away, the disruption, would you believe, is going to be far greater than telling them to stay home?

**SENATOR O'HEARN:** Thank you Senator Gatsas. I know that we looked at other states to see what other states were doing and several years ago one state did remove drivers licenses. It was not effective in how it was done. It was not effective in controlling it. We found kids dropping out searching for these kids...it was just not the most effective way to do it. With this piece of language, the purpose of this is to give those school districts the opportunity to let those students out that are the most disruptive. But when you hear educators say that at age eight we can tell who those students are that are at risk, why aren't they doing something at age eight to take care of that so that they aren't at age 16 a risk? The other thing that we also addressed was programs that are out there. I think that this Jobs for New Hampshire Graduates is a program that will mentor these students. They will identify these children at an early age and be able to mentor them through school and help them through some of these issues. Another thing that we found out as we have worked on dropout information is that kids are mentally dropping out at age 16. We are allowing to happen at 16 because we have it in the law. If we can raise that up to 18, we might be able to take care of some of those problems. Hopefully, as a result of this, school districts will set something in policy to take care of those students that are disruptive. Let them go, let them take a year off, but keep in touch with them. We are looking for school districts to tailor their programs to fit the needs of their communities.

### **MOTION TO TABLE**

Senator Below moved to have **SB 55-FN** laid on the table.

**Adopted.**

### **LAIID ON THE TABLE**

**SB 55-FN**, raising the age at which a child may terminate his or her public education.

**SB 69-FN-A**, establishing an elementary or secondary teacher education and nursing education career incentive program within the postsecondary education commission and making an appropriation therefor. Education Committee. Ought to pass with amendment, Vote 5-0. Senator Larsen for the committee.

### **Senate Education**

**March 13, 2003**

**2003-0709s**

**04/10**

### **Amendment to SB 69-FN-A**

Amend the title of the bill by replacing it with the following:

**AN ACT** combining the career incentive program and the nursing leveraged scholarship loan program within the department of postsecondary education, and establishing a workforce incentive program within the department of postsecondary education, and making an appropriation therefor.

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; Workforce Incentive Program. Amend RSA 188-D by inserting after section 18-e the following new subdivision:

Workforce Incentive Program

188-D:18-f Workforce Incentive Program.

I. The postsecondary education commission shall administer the workforce incentive program in accordance with state statutes and accounting procedures. The program shall include a forgivable loan component and a loan repayment component. The commission shall have the authority to:

(a) Conduct the programs authorized under this subdivision.

(b) Receive and disburse moneys in accordance with this subdivision.

(c) Make application for and receive available federal, public, or private funds.

(d) Adopt rules, pursuant to RSA 541-A, to carry out components of the program, including establishing a reasonable maximum amount of money provided to a recipient under the program, a reasonable frequency of such loans, setting minimum qualifications of applicants, determining the terms of repayment and a schedule and amount of loan repayment, making grants, and paying loan incentives under this subdivision.

(e) Maintain such records and submit such reports as may be required.

II. Application for and disbursement of all moneys shall be made in the form and manner designated by the postsecondary education commission. No moneys may be disbursed by the postsecondary education commission under this subdivision until the postsecondary education commission has adopted rules under subparagraph I(d), and has filed such rules with the fiscal committee of the general court and the governor and council.

188-D:18-g Forgivable Loans.

I. Financial assistance in the form of a forgivable loan shall be provided to qualified individuals who are residents of this state and need such assistance to attend education programs approved by the commission. The loans shall be for education in programs given in New Hampshire, which prepare recipients for careers in shortage areas as determined by the commission.

II. Recipients shall be chosen only on the basis of financial need. Each loan recipient shall sign a note to the state treasurer for the amount of each payment. The commission shall require recipients to agree in writing to work in the shortage area for which funds were received in New Hampshire for a specified period following completion of training.

III. Educational institutions which are eligible for receipt of money provided to students under this subdivision shall match funds provided by the state in order to receive such money. The total amount of matching funds shall not exceed any amount provided by the state during each fiscal year. Such matching funds shall be provided in addition to any other sums provided by the state.

IV. The loans shall be paid through the financial aid office of the school in which the recipient is enrolled. The commission shall establish the maximum amount of money to be provided to a student and the frequency of such loans for completion of studies over the course of training, provided that such amount and frequency shall be reasonable.



## 188-D:18-h Repayment of Forgivable Loans.

I. The commission shall establish repayment schedules that reflect the differing career demands of the shortage areas. All repayment schedules shall contain a component that allows for repayment through service in New Hampshire for a specified period of time.

II. If the note is not cancelled because of service, the recipient shall repay the loan within two years after withdrawing from, or completing the training program or from the inception of monetary repayment.

III. The commission shall have the authority to enter into contracts for the administration of the repayment provisions of this program.

IV. If a recipient refuses to repay a loan, the commission, or its designee, shall turn the account over to the appropriate collection agency.

V. The state treasurer shall credit all loan repayments to the forgivable loan fund for use under this program. Loan repayments credited to the loan fund shall be in addition to any other moneys appropriated to that fund.

VI. Nothing in this subdivision shall be construed to alter any rights or obligations incurred under RSA 326-B relative to the granting and repayment of scholarship loans.

VII. A recipient shall not be considered in violation of the repayment schedule if he or she is:

(a) Engaged in a course of study, at least on a half-time basis, at an institution of higher education;

(b) Serving on active duty as a member of the armed services of the United States, serving as a member of VISTA, the Peace Corps, or Americorps, for a period not to exceed three years;

(c) Temporarily totally disabled, as established by sworn affidavit of a qualified physician, for a period not to exceed three years; or

(d) Unable to secure employment by reason of the care required by a disabled spouse, child or parent for a period not to exceed 12 months.

VIII. To qualify for any of the exceptions in paragraph VII of this section, a recipient shall notify the commission of such claim to the exception and provide supporting documentation as required by the postsecondary education commission.

IX. During the time the recipient qualified for any of the exceptions in paragraph VII of this section, such recipient need not make the repayments required under paragraph II of this section and the postsecondary education commission shall extend the two-year repayment period established under paragraph II of this section by a period equal to the length of time a recipient meets any of the conditions listed in paragraph VII of this section, or if a recipient's inability to complete the loan repayments within this two-year period, because of a financial condition, has been established to the satisfaction of the postsecondary education commission.

X. The commission, or its designee, shall cancel a recipient's repayment obligation if it determines that he or she is:

(a) Permanently totally disabled, as established by an affidavit of a qualified physician; or

(b) Deceased as established by a death certificate or other evidence deemed conclusive under state law.

XI. The commission shall cancel a recipient's repayment obligation when the recipient has received relief under federal bankruptcy laws only if the recipient's loans under Title IV of the Higher Education Act of 1965 have been cancelled as a result of that bankruptcy.

XII. The commission, or its designee, shall have the power to close the accounts of recipients who have completed their repayment obli-

gation either through service or monetary repayment, and deem accounts as uncollectable if all reasonable means of collection have been exhausted.

188-D:18-i Loan Repayment Component.

I. The commission shall repay a percent of loan debt for recipients based on each complete year of qualifying service in a shortage area.

II. The commission, or its designee, shall determine the maximum amount of repayment an individual shall be eligible to receive, and the qualifying service to be covered under this section.

III. Only loan debt that was incurred as a result of postsecondary education and which were part of a financial aid award shall be eligible for repayment.

2 Applicability. Loans granted and notes signed under the career incentive program or the nursing leveraged scholarship loan program, prior to their repeal by section 3 of this act shall be enforced in accordance with the original terms of such loans or notes.

3 Application of Receipts; Loan Fund. RSA 6:12, I(tttttt) is repealed and reenacted to read as follows:

(tttttt) Moneys deposited in the postsecondary education loan fund under RSA 188-D:18-h.

4 Higher Education Corporations; Reports Required. Amend RSA 292:8-kk to read as follows:

292:8-kk Reports Required. When any institution of higher learning ceases the regular conduct of instruction, either temporarily or permanently, whether or not the corporation is dissolved, the academic record, or a legible, certified copy thereof, of each student who has been registered for instruction at the institution shall be forwarded to the postsecondary education commission together with an explanation of the institution's credit and grading system. The postsecondary education commission shall preserve these records and upon request of the individual concerned, shall furnish a certified copy, or reasonable number of such copies, of the individual's record. The fee for each record so furnished to be paid to the commission shall be [\$2 per copy of a student transcript] ***a reasonable fee based on average fees collected by United States institutions***. Said fees shall be credited to the appropriation for the commission.

5 Repeal. The following are repealed:

I. RSA 188-D:18, relative to the career incentive program.

II. RSA 188-D:18-a - 188-D:18-e, relative to the nursing leveraged scholarship loan program.

6 Appropriation. The sum of \$300,000 for the fiscal year ending June 30, 2004 is hereby appropriated to the postsecondary education commission to fund the workforce incentive program set forth in this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

7 Effective Date. This act shall take effect 60 days after its passage.

2003-0709s

### AMENDED ANALYSIS

This bill consolidates the career incentive loan program and the nursing leveraged scholarship loan program into the workforce incentive program which contains a forgivable loan component and a loan repayment program for individuals who work in designated shortage areas. The bill also makes an appropriation to the department of postsecondary education for the purposes of the workforce incentive program.

SENATOR LARSEN: Thank you Mr. President. I move SB 69 ought to pass with amendment. This newly created program combines two scholarship forgiveness programs in New Hampshire law and creates an incentive for students to work in fields of study where we have professional shortages. Offering state scholarships attracts students to study in professional shortage areas by offering forgivable loans for those who have completed their education and agreed to work in shortage areas in the state. I would encourage the Finance Committee to review this legislation as to whether it could be eligible for the \$300,000 in funds which are currently in the Governor's budget set aside for the nursing shortage. We believe that this combined program can address our most critically under employed areas, currently teaching and nursing fields. For the future, it is drafted in such a way as to allow the Post Secondary Commission to decide where our professional shortages lie and based on the need of the market, target future loan forgiveness programs towards those professions. The Education Committee unanimously voted 5 to 0 for the motion of ought to pass with amendment and we ask for your support. Thanks.

**Amendment adopted.**

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist. 15

**March 19, 2003**

**2003-0883s**

**04/05**

**Floor Amendment to SB 69-FN-A**

Amend the bill by replacing section 2 with the following:

2 Applicability. Loans granted and notes signed under the career incentive program or the nursing leveraged scholarship loan program, prior to their repeal by section 5 of this act, shall be enforced in accordance with the original terms of such loans or notes.

Amend the bill by replacing paragraph I of section 5 with the following:

I. RSA 188-D:14 - 188-D:18, relative to the career incentive program.

SENATOR LARSEN: I rise to offer a floor amendment. It was called to our attention after we printed in the calendar, the committee's amendment that there were some language problems with not on the intent, but in fact, numbering language is my understanding. So to correct this problem, we have a floor amendment so that it is technically correct as it goes over to the House. The floor amendment, as I understand, does nothing dramatic to the intent of the bill. Thank you. I move floor amendment 0883 ought to pass for adoption.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 108-FN-L**, relative to charter schools. Education Committee. Rerefer to committee, Vote 3-0. Senator Green for the committee.

SENATOR GREEN: Thank you Mr. President. I move SB 108-FN-L be rereferred to the Education Committee. The Governor has set aside funds for charter schools in his budget. The committee would like to wait to see how the budget moves forward with the Governor's recommendations. This important legislation would be more successful after a care-

ful and thorough review of the existing charter school laws. The Education Committee asks your support for the motion to rerefer to this committee. Thank you.

SENATOR BOYCE: Yes, I rise in opposition to the committee report. This bill was introduced in the last session and was passed by both the House and the Senate and was vetoed by the Governor. Now we have studied charter schools for a long time. I don't think there is much left to discuss. I don't think there is much left to look at. We need to bring charter schools into this state, if for no other reason, to create better opportunities for some of our students. That is the intention of charter school legislation, is to allow a different style of school. A different style of teaching. A different style to reach students who might not otherwise be reached. This might actually have the effect of reducing the dropout problem that is addressed in SB 55. I don't think that we need to rerefer this to the committee so that they can look at it again for another year. I think that we need to go ahead and actually start a charter school in this state. They have been started in other states and have been very successful. They are a good idea. They are something that New Hampshire needs to do and we need to do it now. We don't need to wait until next year. We passed it last year. The House passed it last year. We had a Governor who was in the pocket of the NEA that did not want it. This was vetoed last year by the NEA Governor. We need to pass it and send it to the non-NEA Governor. Thank you.

SENATOR O'HEARN: Thank you Mr. President. This bill has a journey that is starting in the House, the exact same bill brought by the sponsor that had the bill last year, has the bill in the House. The bill has already passed in the House and is in Finance. The purpose of rereferring this piece of legislation is to keep an eye on this piece of legislation that is in the House to make sure it gets back over to us, as well as keeping an eye on whatever happens with charter schools so that we have a document to work from as we see some of these charter schools moving forward, and seeing places in the law where it doesn't work, that we will have this document in order to work from and in order to amend the charter school laws that we have now. There is no need to pass this when we already have one coming over from the House and I ask you to rerefer.

SENATOR BARNES: Senator O'Hearn, are you saying that when this bill, which is pretty close to this, comes over here to the Senate, that perhaps we can put some of the good things that aren't in it, the Senate can add to it and make it correct so that we can get it passed?

SENATOR O'HEARN: Senator Barnes, what is in SB 108 is an exact copy of what is in the House Bill.

SENATOR BARNES: Exact copy.

SENATOR O'HEARN: Exact copy. Of course there may be amendments that come from the House, I am not sure what those may be.

SENATOR BARNES: Then would you agree that perhaps this bill should be tabled until we see the House Bill?

SENATOR O'HEARN: Senator Barnes, it has a fiscal note on it and I thought that rereferring it might be the better thing to do and it would also give me the vehicle that I may need to fix whatever charter school laws that we have.

SENATOR BARNES: Well I have certainly voted for charter schools since I have been up here, so I have no problem with that, I was just trying to find a nice way or a good way to get this passed.

SENATOR O'HEARN: Thank you Senator Barnes. I do believe that this Senate is in support of charter schools and want to do the same thing, and by rereferring it, it was not our purpose to kill it. Our purpose was to hold it as a document. I did ask the sponsor if it was alright to rerefer it and he did say that it was alright.

SENATOR GREEN: I want to say so that the record is clear, that this action and my recommendation is not to oppose charter schools. I do support charter schools. So now we have that on the record. There is an issue, however, and this is not the exact same bill in some of the language, so I have concerns about that. If you look at the Governor's proposal, it gives the power to establish charter schools to the State Board of Education and has taken out any role by the local communities. That is an issue that I think that we can resolve, I don't think that it is something that can't be resolved. I just don't think that with everything floating around about charter schools right now it is not appropriate to act at this point. If rerefer is not the right motion, we as a committee have voted to rerefer, that is our position; however, it is not in any way an attempt to not pass something about charter schools. We are in support of charter schools. Thank you.

**Committee report of rerefer is adopted.**

**SB 118-FN-A**, establishing a ladders to literacy program and making an appropriation therefor. Education Committee. Rerefer to committee, Vote 4-0. Senator O'Hearn for the committee.

SENATOR O'HEARN: Thank you Mr. President. I move SB 118 be rereferred to committee. This program focuses on print, oral language and phonetics for early literacy. Brain development research has shown that the first three years are critical for learning. This program would affect three to five-year-olds. Children who are at risk are more impacted by preschool learning. UNH's Institute on Disability has recently applied for \$1.3 million grant for four years and has been accepted as of October 2002, for the purpose of studying this curriculum's affects. The committee is asking for a rereferral to allow UNH to continue this research and provide its results to the Senate Education Committee. I support the continued efforts of UNH research for this program and the Education Committee asks for your support on the motion of rereferred to committee. For all the work that Senator Estabrook has done, I commend her on it. I have done a lot of research on the ladders to literacy program or its called Mental Linguistics. It is a great program. It is something that I think that we ought to keep in mind as we move forward when we are ready to bring in a preschool program, but I think that at this time, at looking at this and looking at the budget, and looking at what dollars are available, again, for the state of New Hampshire for preschool programs, I would appreciate that you rerefer this bill. Thank you.

SENATOR ESTABROOK: Thank you Mr. President. This bill requires money, so I knew that its life span would not be long; however, I am disappointed that the policy committee is holding the bill rather than moving it to Finance, because I wanted the opportunity to speak to the fiscal impact of the bill before Finance. Since I am not going to get that opportunity, I must speak my piece, briefly, here. Sentate Bill 118 is aimed at improving the early childhood environments in and out of home where

our preschoolers spend their days. Research has clearly shown that the quality of early childhood experiences is one of the most important factors in later schools success. Ladders to Literacy is a preschool curriculum which can be used in a wide variety of settings, including home care. The bill would have trained and mentored adults in the curriculum showing them how to promote oral language, print awareness and phonetic awareness. The cornerstones of early literacy. Research has also shown that most reading difficulties can be prevented by use of such a curriculum. The research being done at the University's Institute on Disabilities is part of a multiyear federal study comparing several successful preschool curriculums. The outcome of that comparison will not be finished for several years to come. I say that we should not do anything for several more years. This bill is extremely important in terms of its fiscal impact. We constantly bemoan the costs of special education. We spend a huge chunk of our state budget on prisons where illiteracy is rampant. If you can't read, you can't succeed in school. If you can't succeed in school, you are far more likely to end up in prison or dropout. There are very real connections here and tremendous savings to be had, by investing early and promoting early literacy. I say that the measly \$375,000 cost of this investment in beginning to get out from behind the eight ball on this problem is well worth it, despite the budget woes. The budget contains millions for charter schools, perhaps a worthy experiment, but clearly an experiment, not proven by research to raise student achievement. Early literacy programs are backed by the research. Pennywise and pound-foolish is the failure to move this bill forward.

SENATOR O'HEARN: Just another point of clarification. Just this week I received some information from the United States Department of Education which will make early reading first grants available again to school districts working with preschools in 2003. Many of the best schools early learning teams are eligible and the range of those federal grants are between \$300,000 and \$1.5 million a year and we have people working on those particular grants to move this forward. Thank you.

SENATOR ESTABROOK: Thank you Mr. President. To clarify the work of early reading first, which is a wonderful initiative from the federal government, the funding for that program is extremely limited. There are only a handful of grants made throughout the country. Programs from New Hampshire that applied, none of them were funded. We need to stop looking solely to the federal government to make progress on this issue. The state needs to be a partner in this effort.

**Committee report of rerefer is adopted.**

**SB 166**, establishing a committee to study methods for the state to create incentives for school districts to provide mentoring for beginning teachers. Education Committee. Ought to pass, Vote 5-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you Mr. President. I move SB 166 ought to pass. Educating our children is a priority – to achieve it requires qualified teachers. We will soon be facing a severe teaching shortage. In the next ten years, forty percent of our teacher workforce is expected to retire. We will need to bring new people into the profession and keep those who join it. One way to retain new teachers is through teacher mentoring. Testimony presented suggested teachers with first year support are more likely to stay teaching. This legislation establishes a committee to study incentives for school districts to provide mentoring for beginning teach-

ers. Notably the legislation dovetails the No Child Left Behind requirement of highly qualified teachers. The Education Committee voted 5-0 and we ask for your support. Thank you.

**SENATOR ESTABROOK:** Thank you Mr. President. I rise as prime sponsor of the bill to thank my co-sponsors, the entire Senate Education Committee for moving this bill forward. Aside from early childhood experiences, the quality of the teacher in the classroom is another key element in school success, and hopefully, through mentoring we can make progress in improving the quality of our teaching.

**Adopted.**

**Ordered to third reading.**

**SB 195**, combining the career incentive program and the nursing leveraged scholarship loan program within the department of postsecondary education. Education Committee. Inexpedient to legislate, Vote 5-0. Senator O'Hearn for the committee.

**SENATOR O'HEARN:** Thank you Mr. President. I move SB 195 inexpedient to legislate. This legislation is part of SB 69, which we just adopted, which creates an incentive to study and work in shortage areas in New Hampshire. I want to thank Senator D'Allesandro for bringing in SB 69. I want to thank the Post Secondary Education Commission for working with us to pull these two bills together so that we had it under one section in our law and making it more efficient. I ask the Senate to vote inexpedient to legislate. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 105-FN**, establishing state appliance and equipment energy efficiency standards. Energy and Economic Development Committee. Rerefer to committee, Vote 5-0. Senator Below for the committee.

**SENATOR BELOW:** Thank you Mr. President. I move that SB 105 be rereferred to the Committee on Energy and Economic Development. This bill is aimed at implementing new energy efficiency standards within our state for certain equipment and appliances, which would allow both the state and our private industries to cut down on wasted energy, reduce related air pollution emissions and save money in the long run. As the prime sponsor of the bill, I feel that it can use some more time and work before we make a decision on it. Similar bills are pending in about a dozen other states and some of the efficiency standards are being considered in congress this year. I urge your support for the 5 to 0 committee report to rerefer for future consideration. Thank you Mr. President.

**Committee report of rerefer is adopted.**

**SB 89**, relative to encouraging the use of biosolids and short paper fiber in road construction projects. Environment Committee. Inexpedient to legislate, Vote 4-0. Senator Johnson for the committee.

**SENATOR JOHNSON:** Thank you Mr. President. I move that SB 89 be inexpedient to legislate as recommended by the Senate Environment Committee. The issue that this bill addresses has already been resolved by all interested parties; therefore, there is no need for the legislature to get involved any further, and as the prime sponsor of this bill, I ask the Senate to act upon the committee's recommendation of inexpedient to legislate. Thank you Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**SB 167**, relative to indoor air quality assessment in public school buildings. Environment Committee. Inexpedient to legislate, Vote 3-2. Senator Johnson for the committee.

**SENATOR JOHNSON:** Thank you Mr. President. I move that SB 167 be inexpedient to legislate as recommended by the Environment Committee. The majority of the committee had several concerns that were not adequately addressed in this bill. First, it appeared to us through the course of the hearing that there has been no trouble between local schools and the state Department of Health and Human Services when it comes to addressing problems of indoor air quality. The few times the issue has arisen among local school districts in the state, all interested parties have been able to work well together to solve the problem. Since this appears to be the case, it seems unnecessary to approve a bill that mandates what is already occurring. Another way to put it is – let's let the local school districts decide what is best for them. Local control is a virtue that we as a committee are hesitant to needlessly take away. Secondly, the committee was not adequately assured that this bill would not eventually result in financial costs snowballing in local communities throughout the state. It is possible to imagine a scenario in which this bill would force the state to require new and highly restrictive guidelines for each school, which would in turn, force many of our schools to spend an exorbitant amount of money to make the required improvements to the ventilation facilities. Passing something to this effect would be fiscally irresponsible on our part as Senators, and it would be senseless on our part as members of our local communities; therefore, I urge the Senate to make this bill inexpedient to legislate. Thank you Mr. President.

**SENATOR ESTABROOK:** Thank you Mr. President. I rise in opposition to the committee report of inexpedient to legislate. This bill calls for the Department of Health and Human Services to assess indoor air quality in public schools. It is put forth on the recommendation of a study committee and in consultation with the Department of Health and Human Services and the Department of Education. The study committee was formed in response to a Department of Education report in 2000 indicating serious air quality problems in our schools. Health and Human Services estimated over 100 schools have air quality issues. The study committee found there to be an ever widening problem of poor air quality and resulting illness in our schools. The state recognized the connections between air quality, health and productivity when it set standards for indoor air quality. They are just not enforced in schools. Even prisoners have better quality than New Hampshire's school children. The bill originally called for enforcement of these standards in schools, but the committee felt the ramifications of this approach might be too extensive, so as a first step, the committee **TAPE CHANGE**.

**Question is on the adoption of the committee report of inexpedient to legislate.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Cohen.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse.**



**The following Senators voted No: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 16 - Nays: 6**

**Committee report of inexpedient to legislate is adopted.**

**MOTION TO REMOVE FROM THE TABLE**

Senator O'Hearn moved to have **SB 55-FN** taken off the table.

**Adopted.**

**SB 55-FN**, raising the age at which a child may terminate his or her public education. Education Committee.

Senator O'Hearn offered a floor amendment.

Sen. O'Hearn, Dist. 12

**March 20, 2003**

**2003-0930s**

**04/10**

**Floor Amendment to SB 55-FN**

Amend the bill by replacing all after section 4 with the following:

5 Applicability; Home Educated Pupils. The provisions of this act shall not apply to children who are home schooled pursuant to a home education plan established under RSA 193-A. The provisions of this act shall not be construed to alter, modify, or affect in any way the provisions of RSA 193-A.

6 Effective Date. This act shall take effect 60 days after its passage.

**2003-0930s**

**AMENDED ANALYSIS**

This bill raises from 16 to 18 the age at which a pupil may decide to terminate his or her public education, and provides an exemption for home educated pupils.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**Senator Barnes is in opposition to SB 55-FN.**

**March 20, 2003**

**2003-0929-EBA**

**04/01**

**Enrolled Bill Amendment to HB 517-LOCAL**

The Committee on Enrolled Bills to which was referred **HB 517-LOCAL**

**AN ACT** relative to the classification of certain roads in the town of Hillsborough and transferring ownership of any residual interest in a certain parcel of property from the state to the city of Keene.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

## FOR THE COMMITTEE

**Explanation to Enrolled Bill Amendment to HB 517-LOCAL**

This enrolled bill amendment makes a grammatical correction to the bill.

**Enrolled Bill Amendment to HB 517-LOCAL**

Amend the bill by replacing line 6 of section 3 with the following:  
station 463+00 and Park Avenue in Keene, as shown on a plan entitled "Plans of Proposed Federal

Senator Green moved adoption.

**Adopted.**

**SB 185**, relative to reducing mercury in automobiles. Environment Committee. Inexpedient to legislate, Vote 3-2. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you Mr. President. I move that SB 185 be inexpedient to legislate. Having heard extensive testimony on both sides of this bill, it is the opinion of the majority of the committee that this bill could potentially do more harm than good to our state. This opinion is based on several factors. First, the domestic auto industry is already making efforts to remove harmful mercury effects from automobiles. In fact, as of 2003, domestic automakers will no longer be installing mercury switches in their new models. It is also interesting to note that, since 2001 there are only a couple of new models that still receive mercury switches when going through the production line. Secondly, if automakers were required to organize a system through which they would finance the removal of mercury switches from all vehicles currently on the road, our state and our constituents would eventually be forced to shoulder the burden of the exorbitant costs associated with such a large undertaking. Everyone knows that in business, the costs are passed on to the consumer. Common sense dictates that we would end up suffering the financial costs of this bill – not the automakers. Based on these facts, the committee recommends that this bill be inexpedient to legislate. As a side note, I would just like to mention that I believe since 1996 when there was about 33,000 pounds of mercury a year, that we were dealing with, as of 2001, I believe that amount has dropped to a little over 200 tons. Thank you Mr. President.

SENATOR COHEN: Thank you very much. I would speak against the committee report of inexpedient to legislate. I urge you to vote that down. As Senator Johnson said, the 2003 cars don't have the mercury switches. I have a 2003 car and I am very pleased with it, but not everybody has a 2003 car. There are an awful lot of vehicles out there that still have these mercury switches. You noticed that there is no FN on this bill? I would urge you very much to look at the analysis that is printed on the bill. It establishes restrictions of auto manufacturers to remove the mercury in automobiles. Also this is a request of the Department of Environmental Services. There is a real problem here. Mercury is, as we have discussed before, a bio accumulative neurotoxin. It is affecting our lakes. If the mercury gets in a smelter, goes up in the air, it gets directly into our lakes and keeps...just very, very small amounts makes it so that we cannot eat the fish in New Hampshire's lakes, which is something that we value. The problem that this bill tries to address is that the mercury in the switches stays with the steel and contaminates an otherwise useful product. There are other New Hampshire industries that are directly

affected by this. This simply calls for the removal of the mercury using switches at the end of the life of the vehicle. I will tell you, in the committee, many people spoke in favor of the bill. Only one person spoke against this bill and he was representing the manufacturers. It is a question of product stewardship. Who is responsible? Who should be responsible? Should it be the automobile owners? No. They shouldn't have to pay for it. Should it be the people in the recycling industry who face the problem? They shouldn't have to take responsibility for it. Should it be the dealers in New Hampshire? They didn't put the switches in, it isn't their responsibility. It should be the manufacturers. The party responsible for putting the switches there should be responsible for removing those switches. The towns and the states should not be responsible. We all know about recalls. Probably many of us have had different things in our cars called back for recall. It is not a big deal. The manufacturers do it with some regularity. They fund...the manufacturers fund those recalls, which are much more expensive than it would be to fix this problem. We heard in committee from the steel recycling industry. The fact is, that auto shred, autos that have reached the end of their lives and are shred, is used in manufacturing other products. In fact, virtually all the steel that we use now is from recycled scrap. We heard from car processors, recyclers, here in New Hampshire, there are three of them who are unable to remove the switches. They can't use the cars. The mercury switches are steel encapsulated and somebody has to pay for the removal of these things. This is a dangerous product, this mercury. The problem, as I said, is the shred is contaminated, which is jeopardizing a New Hampshire industry. The steel recycling industry, which is already in very tough shape. They shouldn't have to shoulder the burden. The solution of course, first of all, take the mercury out of the switches, which they are starting to do in 2003, but also take it out before it goes to the recyclers. At the end of the life of a car, before it reaches the door of the recyclers, at no cost to the taxpayers. Again, this is about stewardship. It is about taking responsibility. I leave you with this question. If the manufacturers shouldn't pick up the costs, then who should? I urge you to defeat inexpedient to legislate so we can move ought to pass.

SENATOR BELOW: Thank you. As a member of the minority who voted against the report of inexpedient to legislate, I would urge its defeat and again, I think at the very least, this bill merits rereference. It is a serious problem for the metal scrap industry for recyclers in the state. Department of Environmental Services did strongly support it. This is what the little switches look like. They are very tiny little switches. But one little switch contains enough mercury that when it is boiled off at the furnace, which the metal scrap is recycled, mercury from a switch is enough to contaminate an entire thirty acre lake. All of it does get put back into the environment because that is what happens. Now one of the questions might be why don't they just remove it at the smelter...that is a very expensive proposition and part of the problem is that we have an international market in steel. Our steel industry is in very serious trouble in this country. If we added that very expensive cost at the smelter, a lot of the products would just likely go overseas where it would be recycled and the mercury would get back into the environment. So we have a problem. The bill as introduced may not be...it may not have been ready to go, but I think it is a problem, that at the very least, we should rerefer the bill and try to find some way to be getting these...the mercury in these switches out of the scrap metal stream. Thank you Mr. President.

SENATOR JOHNSON: Thank you Mr. President. Just to respond to the amount of mercury that are in those switches. In the switches that are in the automobile is about point 8 grams of mercury and in your element, in your thermostat at home that you may have would probably be about 1.25 grams of mercury. I just wanted to relate that to the switches in the automobiles.

**Committee report of inexpedient to legislate is adopted.**

**SB 128-FN**, transferring the bureau of vital records and health statistics from the department of health and human services to the department of state. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 2-1. Senator Kenney for the committee.

**Senate Executive Departments and Administration**

**March 13, 2003**

**2003-0678s**

**01/09**

**Amendment to SB 128-FN**

Amend the bill by replacing all after the enacting clause with the following:

1 Statement of Intent. This act establishes a division within the department of state that will be responsible for the regulation of vital records and the dissemination of vital records data. This act maintains the right of the department of health and human services to have full access to vital records information as set forth in RSA 126:24-c. By transferring the bureau of vital records and health statistics from the department of health and human services to the department of state, the general court recognizes that the same state department that regulates other records of the state shall also regulate vital records.

2 New Chapter; Vital Records Administration. Amend RSA by inserting after chapter 5-B the following new chapter:

**CHAPTER 5-C**

**VITAL RECORDS ADMINISTRATION**

**5-C:1 Definitions.** In this chapter:

I. "Department" means the department of state.

II. "Director" or "registrar" means the director of vital records administration who shall also be known as the registrar of vital records.

III. "Division" means the division of vital records administration, department of state.

**5-C:2 Division of Vital Records Administration Established.**

I. There is established within the department a division of vital records administration under the supervision of a director of vital records administration. The secretary of state shall select the director of vital records administration. In addition to the title of director, the director shall also be known as the registrar of vital records. The director of vital records administration shall be academically and technically qualified to hold the position. The director shall be a citizen of this state or become a citizen of this state within one year of the director's appointment.

II. The director shall:

(a) Be responsible for the day-to-day operations of the division.

(b) Plan and provide operational resources as available, for the establishment and support of a statewide vital records registration, issuance and dissemination program.

### 5-C:3 Declaration of Policy and Purpose.

I. The New Hampshire constitution identifies the office of the secretary of state as the keeper of the records of the state.

II. The division shall provide access to vital records and vital records data while assuring the privacy of all New Hampshire citizens.

### 5-C:4 Registrar of Vital Records; Privacy; Duties.

I. The secretary of state shall appoint the registrar of vital records for the state who, under the supervision of the secretary, shall have charge of the vital records of the state and shall enforce the provisions of law in relation to them.

II. In collecting information, prime consideration shall be given to the protection of the privacy of the individuals about whom information is given. The secretary of state shall adopt rules to ensure that, when information is collected, the minimum of data shall be collected to accomplish a specific purpose. The secretary of state shall also adopt rules to ensure that no information shall be available to unauthorized personnel, that only the minimum be made available to authorized personnel, and that no information that could possibly adversely affect an identified individual be made public. Notwithstanding the provisions of this paragraph, the department of health and human services shall have access to vital records information in accordance with the provisions of RSA 126:24-c.

III. The division is designated the vital statistics center for New Hampshire in accordance with section 306(e) of the Public Health Services Act (42 USC 242k(e)). The division is authorized to collect, compile, coordinate and disseminate all vital records information, while adhering to the privacy requirement of paragraph II. The division shall have the power to enter into contractual agreements to the end that costs related to the collection of information shall be defrayed for outside agencies to the extent that funds are available from any source for such purpose.

### 5-C:5 Statistical Forms.

I. The secretary of state shall adopt rules relative to facts which must be recorded relative to births, marriages, divorces, deaths, and fetal deaths. The registrar for the state shall furnish to sextons, to clergymen and others authorized to solemnize marriages, to physicians, town clerks, clerks of the superior courts, responsible institutions, and clerks of the Society of Friends, a copy of this chapter and suitable forms for recording facts as required by the department of state.

II. In addition to the secretary of state, any interested state agency or individual may request that additional data fields be added to any of the vital records statistical forms. Such requests shall be granted upon meeting the following minimum requirements:

(a) Any individual and any state agency, with the exception of the department of health and human services, shall provide a description of need for the additional data fields.

(b) Any individual and any state agency, with the exception of the department of health and human services, shall provide a business plan describing how the additional data fields will be used.

(c) All individuals and all state agencies shall demonstrate that they have adequate resources to pay for software changes to the secretary of state's automated data collection system including development, testing, training of users, maintenance, and replacement of statistical forms.

(d) All individuals and all state agencies shall provide assurances that any statistical form changes shall not adversely affect any of the data contracts that the secretary of state maintains.

5-C:6 Recordkeeping. The secretary of state may adopt rules to secure uniformity and efficiency in the preparation, transcription, collection, compilation and preservation of facts in relation to births, marriages, divorces, fetal deaths and deaths. In the case of fetal deaths, the name of parent or parents and the name of the child shall not be divulged except by the written consent of the parent or parents. The rules also may include provisions for so-called delayed certificates of birth, the registration of children of unknown parentage, the filing of additional certificates after the legitimization of children and other matters relative to vital statistics.

5-C:7 Rules. The secretary of state shall establish a manual of uniform rules necessary and proper to effectuate the purpose of this chapter. Any rules adopted pursuant to this chapter shall not be subject to the provisions of RSA 541-A.

5-C:8 Rulemaking. The secretary of state shall adopt rules relative to:

I. The confidentiality afforded to individuals under RSA 5-C:4, II.

II. Guidance and direction in the collection of information by data collectors under RSA 5-C:4, III.

III. The statistical forms under RSA 5-C:5.

IV. Securing uniformity and efficiency in the preparation, transcription, collection, compilation, and preservation of facts in relation to births, marriages, divorces, fetal deaths and deaths as authorized under RSA 5-C:6.

V. Births occurring outside an institution under RSA 5-C:11, III.

VI. Birth certificates for foreign-born children adopted in New Hampshire under RSA 5-C:16, I.

VII. Disclosure of certain information under RSA 5-C:17, V.

5-C:9 Seal of Registrar. The registrar shall have a seal which shall be like the seal of the state except that the device thereon shall be surrounded by the words "New Hampshire Department of State, Registrar of Vital Records" in the place of the words "Seal of the State of New Hampshire, 1776."

5-C:10 Authenticated Copies. Every certificate or other official paper executed by the registrar under seal, in pursuance of authority conferred by law, shall be received as evidence, and may be recorded in the proper recording offices in the same manner and with like effect as a legally acknowledged deed; and copies of papers and records in his or her office, so authenticated, shall be received as evidence with the same effect as the originals.

5-C:11 Birth Registration.

I. The division shall maintain a central record of all births occurring in the state of New Hampshire.

II. When a birth occurs in an institution or en route to an institution, the person in charge of the institution or a designated representative shall obtain the personal data, secure the signatures required on a birth worksheet provided by the division, and file electronically a birth record with the state of New Hampshire, division of vital records administration within six days of the birth. The physician in attendance shall provide the medical information required by the worksheet and certify to the facts of birth within 72 hours after the birth. If the attending physician does not certify to the facts of birth within the required 72 hours, the chief of obstetrics or the chief of the medical staff shall complete and certify the birth worksheet.

III. When a birth occurs outside an institution the necessary facts shall be obtained and processed under the rules adopted by the secretary of state.

IV. Either of the parents of the child or other informant shall certify the accuracy of the personal data provided and sign the worksheet in time to permit the filing of the birth record within the six days required by this section.

V. In the case of a child born of unwed parents, the legal portion of the birth certificate shall not contain any reference or specific statement to the fact that the child was born of unwed parents, or to the marital status of the parents.

VI.(a) Except as provided in subparagraphs (b) and (c), the registrar shall obtain the social security identification numbers of both parents of the newborn child at the time the vital statistics information authorized by this section is obtained.

(b) Social security numbers of the parents shall not be obtained when the child is born of unwed parents and paternity has not been established pursuant to RSA 168-A; provided, however, that if paternity is subsequently established by court order or affidavit of paternity and the birth certificate is modified pursuant to RSA 5-C:12, III or IX, the registrar shall then request the social security numbers of both parents.

(c) A parent who does not have a social security number at the time of the initial information request shall sign a declaration attesting to such fact and submit such document to the registrar.

(d) The parental social security numbers shall not appear on the face of the birth certificate itself.

(e) The social security numbers obtained pursuant to this paragraph shall be confidential and shall be disclosed only to the office of child support enforcement services, department of health and human services, solely for the purpose of enforcing a child support order in effect in this state.

(f) Refusal of a parent to provide a social security number pursuant to subparagraph (a) or (b) shall not be grounds for refusal to issue a birth certificate. The preceding sentence shall appear in writing on the forms used by the division to collect information for birth certificates.

#### 5-C:12 Names on Certificates of Birth; Affidavits of Paternity.

I. If the mother was married at the time of either conception or birth or anytime between conception and birth and:

(a) There is no dispute as to paternity, the name of the husband shall be entered on the certificate as the father of the child. The surname of the child shall be any name chosen by the parents; provided, however, that if the parents are separated or divorced at the time of the child's birth, the choice of surname rests with the parent who has actual custody following birth.

(b) A situation arises whereby the mother claims that the father of the child is not her husband, and the husband agrees to such a claim, and the putative father agrees to such a statement, then a 3-party affidavit of paternity may be signed by the respective parties and duly notarized. This will allow the name of a nonhusband to be placed on the birth certificate as the father and the surname of the child shall be any name chosen by the mother.

(c) A question of paternity determination arises which is not resolved under subparagraph (b), it shall be settled by a court of competent jurisdiction.

II. If the mother was not married at the time of either conception or birth or between conception and birth, the name of the father shall not be entered on the certificate of birth unless an affidavit of paternity is signed by the mother and father and duly notarized, in which case the surname of the child shall be any name chosen by the mother and father.

III. When an affidavit of paternity is executed in a hospital or birthing center, or before a midwife, the following procedure shall apply:

(a) A hospital, birthing center, or midwife shall provide to an unmarried mother of a live child born in a hospital, birthing center, or other location, an affidavit of paternity that can be completed by the child's mother and father to acknowledge paternity of a child, which affidavit shall be notarized by the hospital or birthing center staff if the birth occurs in a hospital or birthing center. Before a mother and a putative father can sign an affidavit of paternity, they shall be given oral and written notice of the legal consequences of signing the affidavit, including the resulting rights and responsibilities, and the alternatives to acknowledging paternity by affidavit. If one parent is a minor, notice shall include any rights afforded by minority status.

(b) When a mother and father sign an affidavit of paternity, a hospital, birthing center, or midwife shall:

(1) Complete the affidavit of paternity and forward the record to the division; and

(2) File a copy of the affidavit of paternity with the department of health and human services, office of child support enforcement services, at the address indicated on the affidavit of paternity.

(c) For each affidavit of paternity signed and filed in accordance with this paragraph, the department of health and human services shall reimburse the hospital, birthing center, or midwife in an amount authorized by federal law.

(d) The department of health and human services shall develop and distribute to a hospital, birthing center, or midwife free of charge the affidavit of paternity forms, information on the purpose and completion of the form, and information on the rights and responsibilities of the parents, and shall provide assistance and training to staff assigned responsibility for providing the information.

IV. When an affidavit of paternity is executed and filed with the clerk of the town where the birth occurs, the following procedures shall apply:

(a) In those instances where an affidavit of paternity is completed by the parents of the child and filed directly with the clerk of the town where the birth occurs, the clerk of the town shall forward a copy of the affidavit of paternity to the department of health and human services, office of child support enforcement services, at the address indicated on the affidavit of paternity and shall forward the electronic record to the division. Before a mother and a putative father may sign an affidavit of paternity, they shall be given oral and written notice of the legal consequences of signing the affidavit, including the resulting rights and responsibilities and the alternatives to acknowledging paternity by affidavit. If one parent is a minor, notice shall include any rights afforded by minority status.

(b) The department of health and human services shall develop and distribute to a clerk of the town free of charge the affidavit of paternity forms, information on the purpose and completion of the form, and information on the rights and responsibilities of the parents, and shall provide assistance and training to staff assigned responsibility for providing the information.

V. The division shall link an electronic record of an affidavit of paternity with the original birth record of the child.

VI. An affidavit of paternity signed pursuant to this section shall be considered a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of:



(1) Sixty days; or

(2) The date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.

VII. Written notice of rescission shall be sent to the clerk of the town in which the birth occurred, with a copy to the office of child support enforcement services at the address indicated on the affidavit, no later than 60 days after the affidavit is signed. After expiration of the rescission period, the signed affidavit of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger, and under which the legal responsibilities (including child support obligations) of any signatory arising from the acknowledgment shall not be suspended during the challenge, except for good cause shown.

VIII. When an affidavit of paternity has been properly completed and the certificate of birth has been filed accordingly, and the acknowledgment has not been rescinded pursuant to this section, any further modification of the birth certificate regarding the paternity of the child shall require an order from a court of competent jurisdiction.

IX. In any case in which paternity of a child is determined by a court of competent jurisdiction, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court. Each final order affecting a determination of parentage of a minor child shall be forwarded by the court to the clerk of the town or city in which the birth occurred for entry on the birth certificate. The surname of the child shall remain unchanged unless otherwise designated in the court order.

X. In all other cases, the surname of the child shall be any name chosen by the mother.

XI. If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

XII. The secretary of state shall adopt rules relative to implementing the secretary's duties under this section.

5-C:13 Report of Marriage. Every person who solemnizes a marriage shall make a record of it and of all the facts required by the department and, within 6 days thereafter, shall forward it to the town clerk who issued the marriage license. The town clerk shall forward the report of marriage to the division.

5-C:14 Preservation of Returns. The registrar shall cause the returns made to him or her under the preceding sections and the returns of divorces made by the clerks of court to be arranged, alphabetical indexes of all the names contained in such returns to be made, and the whole to be bound in convenient volumes and preserved in his or her office. Records of births, marriages, deaths, and divorces shall be kept separately.

5-C:15 Birth Registration Cards.

I. The registrar or a town clerk may issue, in accordance with the provisions of RSA 5-C:17, a card containing information relative to the date and place of birth of such persons as may be on record with the division. The fee for the issuance of any such card shall be \$12. However, under no circumstances shall any information relative to any adoption be disclosed or given out by the registrar, or the town clerk, or any other individual except pursuant to RSA 170-B:19, II, except that a birth certificate which does not indicate that the certificate has been amended or that an individual has been adopted may be issued.

II. The town clerk shall forward \$6 of each fee collected under this section to the state treasurer for deposit in the vital records improvement fund established under RSA 5-C:25. The town clerk shall retain the remaining \$4 as a fee for issuing such birth registration card.

5-C:16 Birth Certificate for Foreign-Born Children Adopted in New Hampshire.

I. The registrar shall establish in accordance with rules adopted by the secretary of state a New Hampshire certificate of birth for a person born in a foreign country and for whom a final decree of adoption has been issued by a court of competent jurisdiction in New Hampshire. This certificate of birth shall be established and registered and a certified copy of such certificate issued when he or she receives a request and a fee of \$25 from the adoptive parents or adopted person over 18 for such a certificate and a report of the adoption as provided in RSA 170-B:18. Funds paid to the registrar shall be forwarded to the state treasurer for deposit into the vital records improvement fund established under RSA 5-C:25.

II. The birth certificate established according to this section shall show the true or probable foreign country of birth, and shall state that the certificate is not evidence of United States citizenship for the child for whom it is issued or for the adoptive parents.

III. The registrar shall not establish a New Hampshire certificate of birth if the court decreeing the adoption, the adoptive parents, or the adopted person if 18 years of age or older requests that the certificate not be established.

IV. Any birth certificate established under this section shall not be deemed a record within the meaning of RSA 170-B:19.

5-C:17 Disclosure of Information from Vital Records. In order to protect the integrity of vital records, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics the registrar or the custodian of permanent local records shall not permit inspection of, or disclose information contained in vital statistics records, or copy or issue a copy of all or part of any such record unless he or she is satisfied that the applicant has a direct and tangible interest in such record. However, under no circumstance shall any information relative to any adoption be disclosed or given out by the registrar or custodian of permanent local records or any other individual except pursuant to RSA 170-B:19, II.

I. The registrant, a member of his or her immediate family, his or her guardian, or respective legal representatives shall be considered to have a direct and tangible interest. Others may demonstrate a direct and tangible interest when information is needed for determination or protection of a personal or property right.

II. The term "legal representative" shall include an attorney, physician, funeral director, or other authorized agent acting in behalf of the registrant or his or her family.

III. Commercial firms or agencies requesting a listing of names and addresses shall not be considered to have a direct and tangible interest.

IV. Properly qualified members of the press, radio, television, and other news media shall be considered to have a direct and tangible interest in vital statistic records when the information requested by such media sources is of a public nature.

V. Disclosure of certain information and statistical data to federal, state or local agencies and research for legitimate purposes other than requests for vital records information for the purposes of health-related research under RSA 126:24-c may be authorized by the registrar under rules adopted by the secretary of state.

VI. The department of health and human services shall have a direct and tangible interest in vital records information in accordance with the provisions of RSA 126:24-c.

VII. Disclosure of voluntary acknowledgments and adjudication of paternity by judicial or administrative processes shall be released for the purposes of the state case registry pursuant to RSA 161-B:7.

5-C:18 Fees for Copies and Verifications.

I. A town clerk or the registrar shall be paid in advance, by any person requesting any copy or verification as provided in RSA 5-C:17, the sum of \$12 for making search, which sum shall include payment for the issuance of such copy or verification, and \$8 for each subsequent copy, provided that the fee to town clerks for examination of documents and issuance of a delayed birth certificate shall be \$25.

II. The town clerk shall forward \$8 of each search fee collected under this section to the department of state for deposit in the vital records improvement fund established under RSA 5-C:25 and shall retain the remaining \$4 as the clerk's fee for issuing such a copy. For subsequent copies issued at the same time, the town clerk shall forward \$5 of the fee collected for each subsequent copy under this section to the department for deposit in the vital records improvement fund established under RSA 5-C:25, and the town clerk shall retain the remaining \$3 as the clerk's fee for issuing such a copy. The town clerk shall retain the \$25 fee for a delayed birth certificate as the clerk's fee for examining documents and issuing the delayed birth certificate.

5-C:19 Furnishing to Governmental Agencies. Certified copies, certificates of partial facts, verifications or search of the records may be made for any federal, state or local governmental agency by special arrangement without regard to the provisions of RSA 5-C:18.

5-C:20 Disposal of Fees. All fees collected by the registrar under the provisions of RSA 5-C:15, and RSA 5-C:17-19, shall be paid into the state treasury but shall be held in a special fund which shall be a continuing appropriation for the department, for the use of the division.

5-C:21 Record as Evidence. A certified copy issued by a town clerk of a record of a birth, marriage, or death, on file with the town clerk or division, shall be prima facie evidence of the fact, in any judicial proceeding.

5-C:22 Correction and Amendment. Any correction or amendment to a record of any birth, marriage or death shall be made by the town clerk according to rules adopted by the secretary of state and the town clerk shall receive for amending or correcting any record the fee of \$10 to be paid by the person making application for such an amendment or correction. The town clerk shall retain the fee collected under this section for making such correction or amendment. Such fee shall be waived if the error was made by the town clerk.

5-C:23 Duties and Responsibilities; Penalties.

I. Any person having knowledge of and a direct and tangible interest in the facts shall furnish such information as he or she may possess regarding any birth, death, fetal death, marriage, or divorce upon demand of the registrar.

II. Any person shall be guilty of a class B felony if he or she:

(a) Willfully and knowingly makes any false statement in a certificate, record, or report required to be filed by statute or in an application for an amendment thereof or in an application for a certified copy of a vital record, or who willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate, or amendment thereof; or

(b) Without lawful authority and with the intent to deceive, makes, counterfeits, alters, amends, or mutilates any certificate, record, or report required to be filed by statute or a certified copy of such certificate, record or report; or

(c) Willfully and knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another, for any purpose of deception, any certificate, record, report, or certified copy thereof so made, counterfeited, altered, amended, or mutilated; or

(d) With the intention to deceive willfully and knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another any certificate of birth or certified copy of a certificate of birth knowing that such certificate or certified copy was issued upon a certificate which is false in whole or in part or which relates to the birth of another person, whether living or deceased; or

(e) Willfully and knowingly furnishes or processes a certificate of birth or certified copy of a certificate of birth with the knowledge or intention that it be used for the purposes of deception by a person other than the person to whom the certificate of birth relates; or

(f) Without lawful authority possesses any certificate, record, or report, required by statute or a copy or certified copy of such certificate, record or report knowing same to have been stolen or otherwise unlawfully obtained.

III. Except as otherwise provided, any person shall be guilty of a misdemeanor if he or she willfully and knowingly transports or accepts for transportation, interment or other disposition of a dead body without an accompanying permit when required pursuant to RSA 290.

IV. Except as otherwise provided, any person shall be guilty of a violation if he or she:

(a) Willfully and knowingly refuses to provide information required by this chapter or rules adopted hereunder; or

(b) Willfully and knowingly neglects to comply with or intentionally violates any of the provisions of this section or refuses to perform any of the duties imposed upon him or her by this section.

#### 5-C:24 Decorative Heirloom Certificates.

I. The registrar shall, upon request and payment of the fee, supply to any applicant having a direct and tangible interest as provided in RSA 5-C:17, a decorative heirloom certificate of any birth or marriage registered with him or her.

II. The decorative heirloom certificate shall be of a distinctive design and shall include the seal of the registrar and an original signature. The information on heirloom certificates shall be in accordance with rules adopted by the secretary of state.

III. The fee for each decorative heirloom certificate shall be \$25. The registrar shall forward \$15 of each fee collected to the state treasurer for deposit into the vital records improvement fund established under RSA 5-C:25.

5-C:25 Vital Records Improvement Fund. There is hereby established a special fund for the improvement and automation of vital records at the state and local levels. The sole purpose of the fund shall be to provide revenues for the improvement of the registration, certification, preservation and management of the state's vital records, and said money shall not be used for any other purpose. Moneys in the fund shall be allocated for software applications and development, preservation efforts, hardware, communications and technical support associated with these purposes. Said moneys shall not be used for rent or electricity expenses or for gen-

eral clerical or administrative personnel of the division. The secretary of state shall allocate moneys in the fund with the assistance of the advisory committee established under RSA 5-C:26. The fund shall accrue interest and shall be nonlapsing and continually appropriated to the secretary of state.

5-C:26 Advisory Committee.

I. There is established an advisory committee to assist the secretary of state in administering the fund established under RSA 5-C:25. The advisory committee shall also determine the need for improvement and automation of the processing of vital records upon recommendations from representatives of the department, the New Hampshire City and Town Clerks' Association, and the division of information technology management. The members of the committee shall be appointed as follows:

(a) Two town clerks, appointed by the New Hampshire City and Town Clerks' Association.

(b) Two city clerks, appointed by the New Hampshire City and Town Clerks' Association.

(c) A funeral director, appointed by the New Hampshire Funeral Directors' Association.

(d) A physician licensed under RSA 329 from the office of chief medical examiner, or designee.

(e) A public member, who shall have a direct interest in the registration of vital records, appointed by the department.

(f) The registrar of vital records, or designee.

(g) A health information specialist, appointed by the New Hampshire Hospital Association.

(h) The director of the division of information technology management, department of administrative services, or designee.

(i) The state archivist, or designee.

(j) The commissioner of health and human services, or designee.

(k) A representative of a local city public health agency, appointed by the commissioner of health and human services.

(l) One vital records information user, who shall have a direct interest in the use and dissemination of vital records information, appointed by the commissioner of health and human services.

II. The members of the committee shall choose a chairperson by majority vote. Members of the advisory committee shall serve two-year terms and no member shall serve more than two consecutive terms. The city and town clerk members shall serve staggered terms and initially one town clerk and one city clerk shall serve for two years and one town clerk and one city clerk shall serve for three years.

5-C:27 Quarterly Reports. The department shall file a financial report for the vital records improvement fund for the preceding quarter showing the summary of receipts and expenditures, according to the uniform classifications.

5-C:28 Annual Report. The department shall prepare and file a report on the uses of the vital records improvement fund and shall submit the report to the vital records improvement advisory committee no later than December 31 of each year. The report shall contain the following:

I. The gross revenue received by the fund.

II. A summary of receipts and expenditures, according to uniform classifications.

III. Accomplishments achieved pursuant to RSA 5-C during the preceding fiscal year.

IV. An outline of the projects and programs to be conducted in the ensuing fiscal year with proceeds from the funds.

V. Any recommendations for additional legislation, and other relevant matters.

3 Reference Change. Amend RSA 126:27, IV to read as follows:

IV. User fees which shall be assessed persons requesting data under RSA ~~[126:14, V,]~~ 126:28, 126:30, and 141-B:9.

4 Reference Changes. Amend RSA 6:12, I(tt) to read as follows:

(tt) Moneys received from the town clerk under RSA ~~[126:13, H]~~ **5-C:15, II**, and by the department of ~~[health and human services]~~ **state** under RSA ~~[126:15, H]~~ **5-C:18, II**, which shall be credited to the vital records improvement fund established in RSA ~~[126:31]~~ **5-C:25**.

5 Reference Change. Amend RSA 33-A:4-a, I(e) to read as follows:

(e) The ~~[state]~~ registrar of vital records ~~[and health statistics]~~.

6 Reference Changes. Amend RSA 168-A:2, I(b) to read as follows:

(b) An affidavit of paternity with the clerk of the town where the birth of the child occurred pursuant to RSA ~~[126:6-a]~~ **5-C:12**, I(b) or II. The affidavit of paternity shall have the legal effect of establishing paternity without requiring further action pursuant to this chapter, unless rescinded pursuant to RSA ~~[126:6-a, H-d]~~ **5-C:12, VI**.

7 Reference Changes. Amend RSA 168-A:2, V to read as follows:

V. Upon determining paternity, the court shall provide a copy of the order to the ~~[bureau]~~ **department of state, division** of vital records ~~[and health statistics]~~ **administration**, except that the office of child support enforcement services shall provide the copy to the ~~[bureau]~~ **department of state, division** of vital records ~~[and health statistics]~~ **administration** in cases initiated by the department of **health and human services**.

8 Reference Changes. Amend RSA 168-A:13 to read as follows:

168-A:13 Social Security Numbers. At the conclusion of a paternity action filed pursuant to this chapter in which paternity is established, the court shall also order the mother and father to supply their social security numbers to the registrar of vital records ~~[and health statistics]~~, in accordance with RSA ~~[126:6]~~ **5-C:11**, and to the department of health and human services.

9 Reference Change. Amend RSA 170-B:2, XIII(a) to read as follows:

(a) The person designated as the father pursuant to RSA ~~[126:6-a]~~ **5-C:12** on that child's birth certificate; or

10 Reference Changes. Amend RSA 170-B:18, I to read as follows:

I. Within 7 days after the final decree is filed, the register of probate shall send to the town clerk of the town where the adopted person was born, **the department of state, division of vital records administration**, and to the commissioner of **health and human services** by mail a report of the adoption. The ~~[bureau of vital records and health statistics]~~ **division of vital records administration**, department of ~~[health and human services]~~ **state**, shall provide suitable forms for such reports.

11 Reference Changes. Amend RSA 170-B:19, II to read as follows:

II. All papers and records, including birth certificates, pertaining to the adoption, whether part of the permanent record of the court or of a file in the division, in an agency or office of the town clerk or the ~~[bureau]~~ **division** of vital records ~~[and health statistics]~~ **administration** are subject to inspection only upon written consent of the court for good cause shown, except as otherwise provided in this section. Upon the request of an adoptee over 21 years of age, or a natural parent of an adoptee over 21 years of age, for information concerning the adoptee or natural parent, the court shall refer the adoptee or natural parent to the child-placing agency which completed the investigation required under RSA 170-B:14.

12 Reference Changes. Amend RSA 170-C:14, II to read as follows:

II. All papers and records, including birth certificates, pertaining to the termination, whether part of the permanent record of the court or of a file in the department, in an agency or office of the town clerk or the ~~[bureau]~~ **division** of vital records ~~[and health statistics]~~ **administration** are subject to inspection only upon written consent of the court for good cause shown.

13 Reference Changes. Amend RSA 215-A:32-a, I to read as follows:

I. The executive director shall report annually to the registrar of vital records ~~[and health statistics]~~ pursuant to RSA ~~[126:1]~~ **5-C:2** on any deaths or injuries occurring in the state related to the operation of OHRVs.

14 Reference Changes. Amend RSA 290:1 to read as follows:

290:1 Death Records. Whenever a person shall die, the physician attending at the last sickness shall complete and deliver to the funeral director, next-of-kin as defined in RSA 290:16, IV, or designated agent under RSA 290:17 or shall complete electronically and forward immediately to the ~~[bureau]~~ **division** of vital records ~~[and health statistics]~~ **administration**, a death record, duly signed, setting forth, as far as may be, the facts required by rules of the department of ~~[health and human services]~~ **state, division of vital records administration** as provided in RSA ~~[126:2]~~ **5-C:8**. The cause or causes of death shall be printed or typed on all records required to be furnished under this section. The funeral director, next-of-kin, or designated agent shall transmit electronically the record of death to the ~~[bureau]~~ **division** of vital records ~~[and health statistics]~~ **administration**.

15 Reference Changes. Amend RSA 290:1-b to read as follows:

290:1-b Pronouncement of Death by Registered Nurses. If an anticipated death occurs in a hospital, a nursing home, a private home served by a home health care provider licensed under RSA 151, or a hospice, the registered nurse attending at the last sickness may pronounce the person dead and release the body to the funeral director, next-of-kin as defined in RSA 290:16, IV, or designated agent after certifying the fact of death and completing the death record by hand or other approved electronic process. If a contagious disease is known to be present at the time of death, that fact shall be indicated on the death record in accordance with rules adopted by the ~~[commissioner of the department of health and human services]~~ **secretary of state** as provided in RSA ~~[126:2]~~ **5-C:8**.

16 Reference Changes. Amend RSA 290:3 to read as follows:

290:3 Burial Permits, Obtaining. It shall be the duty of the funeral director, next-of-kin as defined in RSA 290:16, IV, or designated agent under RSA 290:17 to add to the death record the date and place of burial, and having certified the same by hand or other approved electronic process, to forward it to the ~~[bureau]~~ **division** of vital records ~~[and health statistics]~~ **administration** or as otherwise directed by the ~~[state]~~ registrar **of vital records**, and to obtain a permit for burial from the ~~[bureau]~~ **division** of vital records ~~[and health statistics]~~ **administration** in accordance with rules adopted by the ~~[commissioner of the department of health and human services]~~ **secretary of state**, under RSA ~~[126:3]~~ **5-C:8**. In case of a contagious or infectious disease the record shall be completed and transmitted immediately.

17 Reference Changes. Amend RSA 290:3-b to read as follows:

290:3-b Emergency Burial Permit The ~~[bureau]~~ **division** of vital records ~~[and health statistics]~~ **administration**, department of ~~[health and human services]~~ **state**, may issue an emergency burial permit in an emergency as defined by rules adopted by the ~~[commissioner of the]~~ department of ~~[health and human services]~~ **state** pursuant to RSA ~~[126:3]~~ **5-C:8**.

18 Reference Changes. Amend RSA 290:8 to read as follows:

290:8 Prerequisites. No such permit shall be issued until there has been delivered to the ~~[bureau]~~ **division** of vital records ~~[and health statistics]~~ **administration** a death record completed in accordance with RSA 290:1.

19 Reference Changes. Amend RSA 457:7 to read as follows:

457:7 Granting of Permission Such justice or judge shall at once hear the parties, and, if satisfied that special cause exists making such marriage desirable, shall grant permission therefor, which shall be filed with the court and shall be reported to the ~~[bureau]~~ **division** of vital records ~~[and health statistics]~~ **administration**. The ~~[bureau]~~ **division** shall note the fact of the granting of such permission upon the certificate and upon all copies thereof which are by law required to be kept.

20 Reference Changes. Amend RSA 457:22 to read as follows:

457:22 Completion of Marriage License Application. All persons proposing to be joined in marriage within the state shall complete a marriage license application with all facts required by rules of the department of ~~[health and human services]~~ **state, division of vital records administration** as provided in RSA ~~[126]~~ **5-C**, to be entered in any town clerk's office. The clerk shall record the application in a book to be kept for that purpose.

21 Reference Change. Amend RSA 457:38 to read as follows:

457:38 Certified Copy of Record. A copy of the record of a marriage, certified by a city or town clerk or by the registrar of vital records ~~[and health statistics]~~, shall be received in all courts and places as evidence of the fact of the marriage.

22 Reference Change. Amend RSA 458:15 to read as follows:

458:15 Clerks' Returns. The clerks of the superior court shall, in their respective counties at which divorces are granted, make monthly returns to the registrar of vital records ~~[and health statistics]~~.

23 Reference Change. Amend RSA 458:25 to read as follows:

458:25 Return of List. The clerk of the superior court for each county, at the end of each term of court, shall return to the registrar of vital records ~~[and health statistics]~~ a full and correct list of all changes of names that have been decreed hereunder by the court since the last return.

24 Reference Change. Amend RSA 458:30 to read as follows:

458:30 Returns. The clerk of the superior court shall make return of all such decrees of separation and declarations of the resumption of marital relations to the registrar of vital records ~~[and health statistics]~~ in the manner provided for the return of divorces.

25 New Subdivision; Bureau of Health Statistics and Data Management. Amend RSA 126 by inserting after section 24 the following new subdivision:

Bureau of Health Statistics and  
Data Management and Institutional Review Board

126:24-a Definitions. In this chapter:

I. "Board" means the institutional review board, established in RSA 126:24-e.

II. "Commisioner" means the commisioner of the department of health and human services.

III. "Department" means the department of health and human services.

126:24-b Intent. The bureau of health statistics and data management within the department is designated the health statistics center of New Hampshire in accordance with PL95-623 section V(c)(1). The bureau is authorized to coordinate and disseminate health-related information for



the purposes of protecting public health while adhering to privacy requirements. In carrying out its duties, the department shall use the minimum amount of information that is reasonably necessary to protect the health of the public.

126:24-c Access to Information from Vital Records for Public Health Purposes. The department shall have a direct and tangible interest in vital records data including personal identifiers. The secretary of state shall provide continuous electronic access to the department of the entire contents of the data files on a 24-hour, 7-day per week basis. If a means of electronic access becomes possible that will allow access at a faster rate than a 24-hour, 7-day per week basis, the department may utilize such new means of access, provided that it assumes the full cost of implementing the new means of access. Such access shall be provided in standard database format that establishes a remote electronic link from the secretary of state's office to the department that would not restrict the ability of the department to transfer data. However, under no circumstance shall any information relative to any adoption or any restricted record as determined by a court of law be provided to the department.

126:24-d Disclosure of Information from Vital Records. All protected health information possessed by the department shall be considered confidential, except that the commissioner shall be authorized to provide vital record information to institutions and individuals both within and outside of the department who demonstrate a need for such information for the purpose of conducting health-related research. Any such release shall be conditioned upon the understanding that once the health-related research is complete that all information provided will be returned to the department or destroyed. All releases of information shall be consistent with the federal Health Insurance Portability and Accountability Act of 1996 (public law 104-191 (HIPAA)) and regulations promulgated thereunder by the United States Department of Health and Human Services (45 CFR Part 160 and Part 164). This shall include the requirement that all proposed releases of vital records information to institutions and individuals both within and outside the department for the purposes of health-related research be reviewed and approved by the institutional review board, under RSA 126:24-e, before the requested information is released.

126: 24-e Institutional Review Board.

I. There is hereby established an independent institutional review board administratively attached, pursuant to RSA 12-G:10, to the department to review requests for vital records information for the purposes of conducting health-related research. No vital records information requested for the purposes of conducting health-related research shall be released until the request has first been reviewed and approved by the board.

II. The board shall have 6 members, with varying backgrounds to promote complete and adequate review of health-related research activities. The commissioner shall appoint 3 of the members and the secretary of state shall appoint 3 members. The board shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members to promote respect for its advice and counsel in safeguarding the privacy and confidentiality of vital records information that is used for the purposes of health-related research. In addition to possessing the professional competence necessary to review specific health-related research activities, the board shall be able to ascertain the acceptability of proposed research in terms of applicable law, regulations, and standards of professional conduct and practice. The board shall therefore include persons knowledgeable in these areas.

III. The board shall include at least one member whose primary concerns are in the area of public health research activities and at least one member whose primary concerns are in nonpublic health areas.

IV. The board shall include at least 2 members who are not otherwise affiliated with either the department or the department of state and who are not part of the immediate family of a person who is affiliated with either the department or the department of state.

V. No member of the board shall participate in initial or continuing review of any health-related research project in which the member has a conflicting interest, except to provide information requested by the board.

VI. The board may, in its discretion, invite individuals with competence in special areas to assist in the review of issues which require expertise beyond or in addition to that possessed by the members of the board. These individuals may only offer advice and guidance and shall not participate in the decision as to whether or not to approve the release of vital records information for the purposes of health-related research.

126:24-f Rulemaking. The commissioner may adopt rules, pursuant to RSA 541-A, relative to:

I. With the exception of vital records, guidance and direction in the collection and accuracy of statistical and medical information by data collectors.

II. Procedures, conditions, and criteria for release of information, under RSA 126:24-c.

126:24-g Advisory Committee on Quality of Vital Records Information.

I. There is established an advisory committee to assist the secretary of state in assuring and improving the quality of vital records electronic information. The committee shall meet annually or at the call of the chair. The members of the committee shall be appointed as follows:

(a) A town or city clerk, appointed by the New Hampshire City and Town Clerks' Association.

(b) A funeral director, appointed by the New Hampshire Funeral Directors' Association.

(c) A physician licensed under RSA 329, appointed by the board of medicine.

(d) One vital records information user, who shall have a direct interest in the use and dissemination of vital records information, appointed by the commissioner.

(e) The registrar of vital records, or designee.

(f) A health information specialist, appointed by the New Hampshire Hospital Association.

(g) The commissioner or designee.

II. The members of the committee shall choose a chairperson by majority vote. Members of the advisory committee shall serve two-year terms and no member shall serve more than 2 consecutive terms.

126:24-h Penalty. Any person shall be guilty of a class B felony if he or she willfully and knowingly furnishes or disseminates vital records information in a manner inconsistent with the purposes for which it was released.

26 Repeals. The following are repealed:

I. RSA 126:1 through 126:24, relative to vital records and health statistics.

II. RSA 126:30-a through 126:32, relative to vital records and health statistics.

27 Contingency. This act shall take effect on the date upon which 2003, HB 1-A, an act making appropriations for the expenses of certain departments of state for the fiscal years ending June 30, 2004, and June 30, 2005, takes effect.

28 Effective Date.

I. Section 27 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect as provided in section 27 of this act.

SENATOR KENNEY: Thank you Mr. President. I move ought to pass with amendment on SB 128. Senate Bill 128 will provide a cost-effective, one stop resource for records research and management. The committee amended the bill to address privacy concerns and to meet the needs of Health and Human Services which depends on vital records and health statistics for its programs and statutory responsibilities. The bill as amended meets the informational needs of HHS and establishes an independent board, comprised of three members appointed by the Commissioner of Health and Human Services and three members by the Secretary of State, to review requests for information by universities, research groups and others. The bill also makes it a felony to disseminate such information illegally. The committee recommends ought to pass with amendment. Thank you Mr. President.

#### **Amendment adopted.**

Senator Martel offered a floor amendment.

Sen. Martel, Dist. 18

**March 19, 2003**

**2003-0895s**

**01/09**

#### **Floor Amendment to SB 128-FN**

Amend RSA 5-C:I as inserted by section 2 of the bill by replacing it with the following:

I. There is established within the department a division of vital records administration under the supervision of a director of vital records administration. The secretary of state shall nominate the director of vital records administration for appointment by the governor, with the consent of the council. In addition to the title of director, the director shall also be known as the registrar of vital records. The director of vital records administration shall be academically and technically qualified to hold the position. The director shall be a citizen of this state or become a citizen of this state within one year of the director's appointment.

SENATOR MARTEL: Thank you Mr. President. I rise to offer a floor amendment. This amendment is amended to RSA 5-C:1, as inserted by section II of the bill by replacing that section with the following: "there is established within the department a division of vital records administration under the supervision of a director of vital records administration. The secretary of state shall nominate the director of vital records administration for appointment by the governor, with the consent of the council. In addition to the title of director, the director shall also be known as the registrar of vital records. The director of vital records administration shall be academically and technically qualified to hold the position. The director shall be a citizen of this state or become a citizen of this state within one year of the director's appointment." This is a very good amendment, Mr. President and it really resolves having any future problems that we may face with this person who runs the vital records administration department. I urge you to pass the amendment.

SENATOR BARNES: Senator Martel, this is kind of new to me. The Secretary of State shall nominate the director? Why is that happening? I don't think that has ever happened before. Do you have knowledge of that happening before? Does he nominate other situations?

SENATOR MARTEL: I spoke to the Secretary of State about this and his assistant yesterday. They both agreed that this was an excellent move from saving any problems that we may have in the future regarding nominations that may become political. This is another way of making sure that we have...that it goes through a process where the best person will be agreed to by the council and the Governor as well. The nomination comes from the Secretary of State himself. No one else.

SENATOR BARNES: Would you believe that I would have no problem with that current Secretary of State, but he is not going to be here forever and this law will be here for 100 years?

SENATOR MARTEL: And I agree with you, Senator, and that is the reason why this bill is being amended as is.

SENATOR BARNES: Thank you.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise in support of the amendment and in support of the bill. As we know, there has been some deal of controversy between the clerks and how Vital Statistics is operated now. This, I think, clarifies that situation. The clerks are fully in support of this. Moving them to the Secretary of State's office will provide for the kind of treatment that A) the Vital Records need. There will be ample opportunity for people to access it. We will have a situation, I think, that settles a long standing...let's say, I don't want to say a feud because that would be fueling something, but there has been an area of malcontent...and I think that what this does is it clarifies that situation and puts everything in place. All of the players are pleased with this and it provides good synergy. Thank you Mr. President.

SENATOR BOYCE: Senator Martel, I would just like to clarify if I could, what the amendment does is it makes it so that the Secretary of State is not appointing the person to be the director, but instead choosing someone that the Governor and Council would then be appointing?

SENATOR MARTEL: Correct. That is right.

SENATOR BOYCE: So as the bill was amended before, the Secretary of State would do the picking and appointing and in this case, he will do the picking and the Governor and Council will do the appointing?

SENATOR MARTEL: That is correct.

SENATOR BOYCE: Thank you.

SENATOR ROBERGE: Senator Martel, is this establishing a new position that we don't currently have?

SENATOR MARTEL: No, Senator, there is a Director of Vital Records that we have today.

SENATOR ROBERGE: Who is the person who occupies that position?

SENATOR MARTEL: I don't know who it is. I can't tell you. It is someone who has been there for a while. I would say several years. They have been doing this.

**Floor amendment adopted.**

SENATOR BELOW: I guess that I rise with some trepidation and concern about this change. New Hampshire will be the first state, perhaps the only state, to transfer its Vital Records function from a public health department to the Secretary of State's Office. In the long history of vital records, as I understand it, there has never been an incident of inappropriate disclosure from our department. I think that I have heard the comment that all parties are satisfied with this. I know that I have a number of constituents who do a lot of research into health matters and health statistics and health records are very important for that purpose, not necessarily individually identifiable information, but compilations of data. They have a very good experience working with the health and human services in the vital records, access in vital records for important health research that looks at outcomes, that looks at trends, that looks at problems in public health, that are important to proving the quality of healthcare, and in fact, in controlling the cost of healthcare. So I think that for that reason, I am probably going to vote against this. I do appreciate the fact that the committee sought to address these concerns and I do hope that those elements are well thought through so that we don't diminish the quality of some of our health research in this state. Thank you Mr. President.

SENATOR D'ALLESANDRO: Thank you Mr. President. I appreciate the opportunity to speak for a second time. I think that some of the fears that are expressed by Senator Below are taken care of. We have an excellent mechanism in place at the Secretary of State's office to handle this situation where access will be as good if not better than it has been in the past. I don't think that will be an issue. There were some issues that are addressed by this piece of legislation. Those issues surrounded the finances associated with the monies collected for vital records. That in essence was part of the problem. This clarifies that situation and as a result, I think the service will be better than it has been in the past and as a result of this transfer, so I hope that his fears could be mitigated and that the Secretary of State will bear those responsibilities. He will nominate a person who is capable, who is qualified, who can handle the situation and if indeed, problems do occur, we know where to go and how to settle them. Thank you Mr. President.

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 226-L**, increasing the homestead exemption. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 3-0. Senator Peterson for the committee.

**Senate Executive Departments and Administration**

**March 13, 2003**

**2003-0711s**

**08/10**

### **Amendment to SB 226-LOCAL**

Amend the bill by replacing section 1 with the following:

1 Homesteads; Amount Increased. Amend RSA 480:1 to read as follows:  
 480:1 Amount. Every person is entitled to [~~\$50,000~~] **\$100,000** worth of his or her homestead, or of his or her interest therein, as a homestead. The homestead right created by this chapter shall exist in manufactured housing, as defined by RSA 674:31, which is owned and occupied as a

dwelling by the same person but shall not exist in the land upon which the manufactured housing is situated if that land is not also owned by the owner of the manufactured housing.

**SENATOR PETERSON:** Thank you Mr. President. I move ought to pass with amendment on SB 226. Senate Bill 226 will increase the homestead exemption from \$50,000 to \$100,000 to protect against such things as telephone scammers, credit card fraud and similar frivolous lawsuits, particularly in how they might impact the elderly and their situation in their homes. Similar legislation around New England can reach up to \$300,000 and in terms of the homestead exclusion, and in view of the sharp increase in recent property values, it makes sense to do this now. The committee removed the portion of this bill that created a separate class of exemptions based on age requirements and increased the exemption from \$50,000 to \$100,000 for all persons. We recommend ought to pass with amendment. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 215-FN**, relative to the use of prerecorded telephone messages for political advocacy. Interstate Cooperation Committee. Ought to pass with amendment, Vote 4-0. Senator Sapareto for the committee.

**Interstate Cooperation**

**March 13, 2003**

**2003-0699s**

**03/04**

#### **Amendment to SB 215-FN**

Amend RSA 664:14, IV(c) as inserted by section 2 of the bill by replacing it with the following:

(c) Any political advertising in the form of a prerecorded message transmitted by telephone shall, within the first 60 seconds of the message, disclose the name and telephone number of the candidate, committee, or other person paying for the telephone call.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 New Paragraph; Political Advertising; Signature, Identification, and Lack of Authorization. Amend RSA 664:14 by inserting after paragraph VI the following new paragraph:

VII. Any person who knowingly causes any communication that violates this section to be received within the state of New Hampshire shall be guilty of a misdemeanor if a natural person or shall be guilty of a felony if any other person.

**2003-0699s**

#### **AMENDED ANALYSIS**

This bill requires that any political advertising in the form of a prerecorded telephone message disclose the name and telephone number of the candidate, committee, or other person paying for the telephone call. This bill also requires that violations of the political advertising identification law meet a knowing standard of conduct for criminal penalties to apply.

SENATOR SAPARETO: Thank you Mr. President. I move that SB 215-FN ought to pass with amendment. Senate Bill 215 adds to the definition of "messages" that the transmission by telephone of a political message would require disclosure within the first 60 seconds of the message the name and telephone number of the candidate, committee or other person paying for the telephone call. These problematic messages arose during the most recent campaign and affected both Democratic and Republican candidates. People who received these messages were confused. Candidates felt that the messages hurt both their campaigns and their integrity. The committee amendment adds the condition that the person "knowingly" transmitted the message in order to be guilty of criminal penalties. The Interstate Cooperation Committee recommends that SB 215 be adopted as amended. Thank you.

**Amendment adopted.**

SENATOR BARNES: Thank you Mr. President. I am delighted to see Interstate Cooperation having a bill this year. It has been three years since that committee has had a bill in front of this chamber. I thought that it had gone out of existence...and then I looked into my little book and I found that Senator Gatsas is the esteemed chairman and would like to say that I am very pleased that that committee is still alive and well. Senator Gatsas, congratulations on getting your first bill in three years.

SENATOR GATSAS: Senator Barnes, you noticed that we only do the heavy lifting for the people in the state of New Hampshire because there was nothing more irritating in the last election than all of the phone calls that all of those people got.

SENATOR BARNES: I noticed that you do the heavy lifting, yes I understand that you do the heavy lifting.

SENATOR GATSAS: Thank you Senator Barnes.

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 20**, relative to the qualifications for the property tax exemption for the disabled. Public Affairs Committee. Rerefer to committee, Vote 4-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you Mr. President. I move SB 20, which happens to be one that I sponsored, to be rereferred to committee. This bill would allow towns to extend the property tax for the disabled to persons who qualify for federal or state, total and permanent disability retirement, or who show sufficient proof of disability as certified by a physician. While we recognize the need for individuals with disabilities to receive tax exemptions, we need to further study the factors related to the actual administration. It is important to make this process easy to administer locally and create a defined proof of disability because this legislation has the potential to significantly shift the tax burden throughout a community if it's not done in a very precise manner. Incidentally, the lady who asked me to put this piece of legislation in, gave testimony to the committee over a speaker phone. She was unable to come to Concord because of her disability, and the Chairman of the Committee allowed her to give testimony on a speaker phone. I move SB 20 rereferred to committee and thank you very much.

**Committee report of rerefer is adopted.**

**SB 92-FN**, regulating home improvement contractors. Public Affairs Committee. Inexpedient to legislate, Vote 4-0. Senator Morse for the committee.

**SENATOR MORSE:** Thank you Mr. President. I move that SB 92 be inexpedient to legislate. This bill would establish a board for the registration and regulation of home improvement contractors. Senate Bill 92 was drafted at the request of the Consumer Protection Bureau to help them address complaints against home improvement contractors. The Public Affairs committee feels that simply licensing a home improvement contractor will by no means guarantee that they will do better work. The contractors that do quality work will likely register and the handful of contractors with complaints against them will probably disregard the registration process. In the end, it will be no easier to find or prosecute the violators. I move that SB 92 be inexpedient to legislate. Thank you.

**SENATOR D'ALLESANDRO:** Thank you Mr. President. I rise to speak against the motion. There are those who hire a contractor that they have known for a long period of time, and in prior years, I think that was a practice that was in place in New Hampshire because we knew each other, we worked with each other and we had a common respect for one another and the contractors had common responsibilities and accepted those responsibilities. We are in a new world today. There are a number of subs who come into play and who come to do a job and who actually fleece the people they are working for. The Attorney General's office had 200 plus complaints about people who were taken advantage of by shoddy work or work that wasn't completed. We do have a lot more going on in the state, there is no question about that. We have a number of permits that are issued. It seems to me that given the magnitude of the work that is being done, protecting the individual is of maximum importance. By licensure, you would have at least, the imprimatur that says that the state has knowledge of this entity. You would have a recourse. You could take that recourse. Now I read the testimony and obviously, some people always search for the lowest price. We are always looking for the right deal, and as a result, the lowest price sometimes, isn't the best price, but we have to give the public some kind of protection. This bill attempts to begin that. So I would urge you to think about that before you cast your vote. Thank you Mr. President.

**SENATOR COHEN:** Senator Morse, I don't see what harm there could be, and there is the old saying, "Let the Buyer Beware". If a person who was hiring a contractor, wanted to ask a contractor...chose freely to ask a contractor, do you have a license? Then that person would have just another tool to base an informed decision on. What could possibly be the harm in that, in finding out, yes, you are licensed. If somebody is not licensed, they could still go with them, but wouldn't it be helpful information to the consumer?

**SENATOR MORSE:** I disagree with you in the sense that the tools aren't already there that you can check references and all. The Senator did point out that there were 223 complaints. We will take one division and that is home builders. They took out 8,000 permits last year. That is just home builders. Now the 223 complaints, the total dollars in those complaints, one person was half of that. I guess that we didn't see this great upsurge, and I am sure that we could have if we continued to study this and saw on the other end from the businesses that they were having just as much problem on the financial end with the consumers. So in a fair-



ness issue, I think that you are asking people to register or license that are truly abiding by it. What we saw was that you probably wouldn't get the guy that we were chasing today through the consumer protection bureau.

SENATOR COHEN: I still think that it would be a good tool. Thank you.

SENATOR LASREN: If I would have known that this bill was going to be introduced, I probably would have signed onto it. I think that it is important for the consumers of this state. As we heard there were 223 complaints filed in the Office of Consumer Protection. There were \$600,000 lost by consumers to home improvement contractors who either did sub-standard work or who did not provide the services that they had agreed upon. We heard from the Office of Consumer Protection Bureau, that this bill would help them. It would help them in that there would be names and contact information. Right now there is no one location to find where contractors are located. This bill would begin to protect some of the elderly of our state. We had someone from the state Committee on Aging testify that the elderly were often-times taken advantage of by, not the honorable, good, hard working contractors of this state, but right now, you cannot...you don't even have the opportunity to ask 'are you registered with the state'? There is no credentialing given to contractors in this state. Not long ago we had, in Concord, a couple who were so upset by the loss of over \$5,000 of their deposit, that they went to a contractors office with a gun. This is the same contractor who in fact turns up to be incarcerated right now. However, we know that there are circumstances where people need to have some verification, at least a registration so there is follow through if shoddy work is done, if consumer protections are needed. There needs to be a place for the consumers of this state to go. This bill is a step in that direction and I think that it is a mistake for us to say that it is inexpedient to legislate. We heard that there were big problems in this area. It is the second highest level of complaints in the Attorney General's office. We don't have the capability, and many people don't have the capability to take contractors to court. That takes **TAPE CHANGE** it is up to us to protect consumers and this is one way to make a step in the right direction.

SENATOR BARNES: Senator Larsen, I heard a couple of times here today, "the elderly". Could you define...when you said "elderly" what you mean, what age bracket? I am serious, "elderly" gets thrown around here a lot and I would like to know what "elderly" is.

SENATOR LARSEN: I think that you should ask the state committee on aging because they testified on the need for consumer protections for the elderly. They did not bring us a definition of elderly, but I believe that the State Committee on Aging probably has their definition.

SENATOR BARNES: Well that word gets floated around here pretty good, and I got a hunch that I am included in that because I am 72.

SENATOR LARSEN: Oh. I can assure you that the AARP is after me as well, so there are many levels of elderly, I guess it depends on where you are.

SENATOR BARNES: The AARP hasn't caught me and they are not going to. I will give you a would you believe? I am an elderly. I've got a hunch that if I asked those birds they are going to say 65 is elderly, well I am 72 almost.

SENATOR LARSEN: I did not mean to impugn your age or your wisdom.

SENATOR BARNES: Oh no, no... but this elderly keeps getting thrown around. I heard a couple of other Senators talk about it, too. They are kind of young bucks that are throwing it, so I just wanted to get a definition of what "elderly" is. If it is me, fine, I will take the title "elderly" and I will wear it proudly. I don't have any gray hairs yet.

SENATOR LARSEN: That is right.

SENATOR BARNES: My friend over here has a couple. Would you believe that when the wife and I, and she is elderly too, she just had her sixty-ninth birthday so she is also elderly. Don't report that to her please.

SENATOR LARSEN: I was going to say, I am not sure that she wants that in the record. Could we delete that from the records?

SENATOR BARNES: Don't hear that. But when she and I choose to have work done on the house, when we have someone come in, they are always asked where they have done some other work? We always, which is kind of easy, pick up the phone or go and look and see what that contractor has done and pick up the phone and say, "Sadie"... "Jack, how are you, how did that driveway come out, did he do a good job?" "Oh Jack, he did a terrible job." Well I am not going to hire that bum if he did a bad job. So I think "Let the buyer beware" works very well. I don't think that the elderly... I think that the elderly are probably more concerned about their pocketbook than some of the younger folks, and I think that they look after it pretty good. I think that all they have to do is snoop around and ask one question, "where have you done work before?" and follow up on it. Would you believe, I think that is a solution to this, that is why I don't think that we need this?

SENATOR LARSEN: Would you believe that I think in the wisdom of age comes the wisdom to ask some of the right questions and regardless of your age, some people don't ask the right questions. That is one reason why we need an Office of Consumers Protection, and that is one reason why they came to us saying that they needed an additional protection which is registration. So while some elderly are very wise, people of all ages can add wisdom and they need this as we heard from the Office of Consumer Protection.

SENATOR BARNES: Thank you Senator Larsen.

SENATOR SAPARETO: Thank you Mr. President. Senator D'Allesandro, if I have someone who has been a victim of an unscrupulous contractor, if I had a contractor I hired who was not licensed under this board or registered under this board, is there any jurisdiction or any recourse to have against that contractor that is included within this bill?

SENATOR D'ALLESANDRO: The only jurisdiction would be licensed with the state of New Hampshire. Under this a board would be set up and the recourse would be to the board. The enforcement authority would lie in the Attorney General's office.

SENATOR SAPARETO: But if the contractor has not registered with this board, how can he follow under the jurisdiction of that board?

SENATOR D'ALLESANDRO: That is a good question. If the contractor failed to register, the contractor could then be illegally doing business in the state, if indeed the process said that you have to be registered to do that, and then your recourse would be to go to the Attorney General's office and get action against this person for illegally practicing his trade in the state of New Hampshire. That to me, would be the only recourse that would be available.

SENATOR SAPARETO: Let's say that I hire someone to fix a switch in my house, does that qualify as a contractor for remodeling?

SENATOR D'ALLESANDRO: Well if you hire someone to fix a switch in your house, if it is an electrical switch, I would hope that you would hire a licensed electrician to do that, It would seem to me. We do license electricians in this state so the process is in place whereby you could get someone who was licensed by the state of New Hampshire to perform this function if that person performed that function improperly or incorrectly, you had recourse.

SENATOR SAPARETO: I have to ask this. How about a broken step or stairway?

SENATOR D'ALLESANDRO: Well if you have a broken step or a broken stairway I would suggest that you fix it yourself.

SENATOR CLEGG: I rise in favor of the inexpedient to legislate and I will preface my remarks by saying that I am a licensed contractor in the state of Massachusetts. I can tell you that barely a month goes by without somebody calling me saying, "hey, can I use your license to pull a permit?" The answer is always no, but those people find someone somewhere because they end up doing the job. Licensing doesn't cure anything. Talk to the electricians. What is the biggest problem in the electrical industry? It is that the Journeymen and the Apprentice who says to the guy, I can save you money, and he goes and does the work. He is not supposed to, but he does it. The plumbers, the same thing. It is not the master plumber that we have a problem with, the guy with the license, it is the guy below him. Why? Because he can save you money. That is where the problems arise. When you talk about contractors, giving them a license isn't going to make a bit of difference. A lot of those guys work out of the back of their pickup truck. All that they do if they lose their license is they hire a guy, they say take the test and get your license and we are going to operate under yours. You would be surprised how many plumbing and electrical companies, right now, operate with somebody who is employed by them, has a masters license and not the owner of the company, so it doesn't solve anything. I have a paving company in my district, who every year, and sometimes twice a year, changes their name. The reason being is that they like to lay asphalt over loam and it doesn't last long, and when they get enough complaints over at the Attorney General's office, they just fold that company. It has not assets, and they start anew, but they are never without work. Licensed or unlicensed, shoddy contractors and people who are out there to steal from the public, are going to continue, licensing isn't going to do a thing and I would suggest that we continue with inexpedient to legislate and ask people to be more careful about who they hire.

### **Committee report of inexpedient to legislate is adopted.**

**SB 192-FN**, relative to domicile for persons needing assistance. Public Affairs Committee. Inexpedient to legislate, Vote 4-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you Mr. President. I move SB 192 inexpedient to legislate. This bill would provide that a person be eligible for assistance under RSA 165 Aid to Assisted Persons, from the town of residence or last known address. This issue has long been a source of contention between New Hampshire's cities and smaller towns. Under current law cities are paying a disproportionate amount of the cost of taking care of these transients. In efforts to address this problem, Represen-

tative Brundige has created the Commission to Study Problems Related to Delivery of Local Assistance during the 2002 legislative session. Their goal is to study the ways in which we can help municipalities more equitably share the burdens of an increasingly large transient and homeless population. There is strong support that SB 192 be inexpedient to legislate until we hear the Commission's final report, which is due to us by November 1, 2003 we can make a better decision. Therefore, the Public Affairs Committee recommends SB 192 be inexpedient to legislate.

SENATOR MARTEL: Thank you Mr. President. I was proud to be the prime sponsor on this bill, in fact, the only sponsor and at the request of the Welfare Commissioner of the city of Manchester, who told me that many of the large cities in the state were faced with these problems of having to take care of people who resided in other communities, but came to the largest cities in order to get either higher benefits or having a better chance of getting food or whatever domicile that they would get. It was really being a burden on the city of Manchester and other cities. When I went to testify before this committee, it was made evident to me that this commission, which Representative Brundige has filed for and has become law, and a commission is going to start its work, I believe, sometime this summer. I agree that bill will be the best vehicle to look at this problem. So I urge that we support the motion of inexpedient to legislate this bill and that we go forward with this study to make sure that we do this right and we identify the other manner in which we are going to do this in the future.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise in support of the inexpedient to legislate in light of the fact that a commission is being established. We did a study committee in the Senate two cycles ago, it was SB 12. Senate Bill 12 indicated that as times get more difficult, and the state gets into a situation where dollars are not available, the duties and responsibilities for caring for people, fall back on the municipalities, by New Hampshire law, and that means their entire need has to be addressed at the local level. The city of Manchester, being the largest city in the state, bears that responsibility. We have a new commissioner in Manchester, Paul Martineau who is doing a really outstanding job, but it is clear that who bears this responsibility? How this responsibility is ascertained becomes even more and more significant as times get tough, so this item and this study, I think, is a major factor, because it could have a detrimental affect on all of our communities. We know that in the final analysis our communities accept the ultimate responsibility. Thank you Mr. President.

#### **Committee report of inexpedient to legislate is adopted.**

**SB 228**, relative to the preservation of historic barns and similar historic agricultural structures by municipalities. Public Affairs Committee. Refer to committee, Vote 4-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you Mr. President. I move SB 228 be rereferred to committee. This bill grants the governing body of a municipality the right to notice of sale and opportunity to purchase historic barns and similar agricultural structures within their municipality. These structures symbolize New Hampshire's unique heritage, hard work, and stewardship and deserve our sincere attention. The bill's prime sponsor requested that SB 228 be rereferred to committee because he feels there is more work that needs to be done to make it more amenable to all parties

concerned. The New Hampshire Historic Agricultural Advisory Committee and State Historical Resources Division support this action and we hope we will still be involved in the process of redrafting this bill. I move SB 228 be rereferred to committee. Thank you.

SENATOR JOHNSON: Thank you Mr. President, I will be brief. This was a bill that I brought forward through rules that came in late. I didn't have as much time to work on it as I would have hoped, and I think that it got national attention because there was a barn, not too far from this state house, that was sold and probably will end up out-of-state, as far as California. I also understand that we are losing our heritage by these structures going out-of-state. They are estimating that 100 to 150 of these are leaving a year. I have a lot of people interested and working on this bill and I think that we can bring something back next year that will be satisfactory to the people that are involved and to the state of New Hampshire. Thank you.

**Committee report of rerefer is adopted.**

**SB 163-FN**, relative to the procedures of the health services planning and review board. Public Institutions, Health and Human Services Committee. Ought to pass, Vote 4-1. Senator O'Hearn for the committee.

SENATOR O'HEARN: Thank you Mr. President. I move ought to pass on SB 163. Senate Bill 163 addresses a number of basic housecleaning and enforcement measures as well as a provision that will help to more accurately determine how CON projects are accounted for. The health services planning and review board is currently required by law to hold meetings in Concord. Senate Bill 163 simply allows meetings to be held in publicly owned buildings anywhere in the state. The review board is also required to use certified mail for official business, which is costly and time consuming. Senate Bill 163 adds e-mail as a way to send notices and acknowledge receipt, something providers have asked for as well. The bill also raises the board spending cap, which is funded by an assessment on providers, from \$500,000 to \$750,000 in recognition of increasing rents, vendor costs and an immediate need for part-time help. The bill will also help to more accurately determine project costs by adding operating leases to CON review. The committee recommends ought to pass. Thank you Mr. President.

**Question is on the committee report of ought to pass.**

**A roll call was requested by Senator Flanders.**

**Seconded by Senator Green.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Below, Green, Flanders, Odell, Peterson, O'Hearn, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, D'Allesandro, Morse, Cohen.**

**The following Senators voted No: Boyce, Roberge, Sapareto.**

**Yeas: 18 - Nays: 3**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 202-FN-A**, relative to funding for kidney dialysis patients and making an appropriation therefor. Public Institutions, Health and Human Services Committee. Ought to pass, Vote 4-1. Senator Martel for the committee.

SENATOR MARTEL: Thank you Mr. President. I move ought to pass on SB 202. Kidney dialysis patients suffer from End Stage Renal Disease, a disease that affects about 680 people in the state. Although medicaid covers the cost of medical treatment, Medicaid does not cover transportation costs. Transportation to the closest dialysis center is required three times per week, 52 weeks per year and is, literally, a matter of survival. Public transportation is impractical due to the rural nature of the state in addition to the fact that dialysis is a three to five hour procedure. Senate Bill 202 will help low income individuals suffering from End Stage Renal Disease by providing \$30,000 for the biennium to the Catastrophic Illness Program for underwriting these transportation costs to and from the dialysis center. Per program guidelines, the amount of reimbursement is 21 cents per mile and individuals are allotted up to \$2,500 per year. The committee recommends ought to pass. I thank you Mr. President.

SENATOR LARSEN: I rise to thank Senator Martel for that good explanation of the bill and to add my support for the bill. We heard in many areas of the state, that people with kidney disease have trouble locating a volunteer to help them get to their visits for dialysis machines. As you heard, they need to get there three times a week. We heard that in Senator Odell's area, particular, was having trouble finding volunteers. I saw emails going by asking and pleading with people to sign up to help drive people to dialysis treatment. One of the issues of course is low income people have difficulty getting to the only ten treatment centers that exist in this state and one way that we found to do that was through the Catastrophic Illness Program that currently exists. It currently serves some people with End State Renal Disease. This bill will help improve that in which the amount has not been changed since 1985. It is my understanding for Finance members that there is in fact a flexibility within the Catastrophic Illness budget that you received to be able to accommodate this without additional monies. I will just point that out because I may not know precisely when you discuss this bill, so I want to assure you that it doesn't require an additional amount of monies, but in fact, needs to just recognize that this is an area where some of the additional monies need to go to help End State Renal Disease patients survive. Thank you.

SENATOR BOYCE: I rise in opposition to this bill. It is a very small amount of money that is being asked for, I understand that. It is for a very small group of people; however, I think that it sets a precedent that will be followed by other diseases with larger populations, asking for much more money. It is a dangerous precedent. I think that there are other ways to deal with this, particularly if the sum of money is only \$30,000. I think that you know, we could probably get a major league baseball player up here for one fund raiser a year and raise more money than that. I think that it is laudable that we want to take care of this small group of people, but we are opening ourselves up to a much bigger situation. Who knows who will be next. Chemotherapy for cancer. It is endless the number of people who might decide that now their infirmity needs to have equal treatment. So I am against this bill on that basis. Thank you.

SENATOR KENNEY: Senator Larsen, my understanding about this bill is that the funds would go into the Catastrophic Fund and that there are presently five categories of illnesses that the Catastrophic Fund supports when it comes to transportation. Were you aware of that?

SENATOR LARSEN: Yes. One of them is End Stage Renal Disease, and every year the Catastrophic Illness Fund has run out of its allotment and the department has received authorization from Fiscal Committee to cover additional needs. The list of people who receive catastrophic illness support through the Catastrophic Illness Program includes a list of five conditions, is my recollection. It already includes adults with End Stage Renal Disease so that is nothing...we are not adding another group. It is simply saying that this group needs to be considered for an increase in per mile payment or some other way that will help them find a way to get to their dialysis treatment on a regular basis, often-times by volunteers. It also encourages them to perhaps look at the use of existing van services that do exist in some communities. They should be able to reimburse or cap a Community Action Program van for that transportation.

SENATOR KENNEY: So you would suggest that we are not opening up a new category when it comes to this fund?

SENATOR LARSEN: No, we are not. They are within the existing category. The Catastrophic Illness Program currently covers cancer patients, cystic fibrosis, end stage renal disease, hemophiliacs and spinal cord injury. In the past, we have passed bigger bills that cover people with brain injury, with other causes. This bill does not expand who gets covered, it simply says that within the existing program, they need to look at increasing transportation costs and ways to encourage more volunteers to help through this program. Thank you.

SENATOR KENNEY: Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 216-FN-A**, relative to the developmental services priority waiting list and making an appropriation therefor. Public Institutions, Health and Human Services Committee. Ought to pass with amendment, Vote 3-2. Senator Martel for the committee.

**Public Institutions, Health and Human Services**

**March 12, 2003**

**2003-0657s**

**05/03**

**Amendment to SB 216-FN-A**

Amend the bill by replacing section 1 with the following:

1 Appropriation; Funding Developmental Services Priority Waiting List. The sum of \$2,650,000 for fiscal year ending June 30, 2004, and \$2,650,000 for fiscal year ending June 30, 2005, is hereby appropriated to the department of health and human services, division of developmental services, to fund the waiting list for services for individuals with developmental disabilities who are identified as priority level one, as defined in section 2. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

SENATOR MARTEL: Thank you Mr. President. I move ought to pass with amendment on SB 216-FN. Senate Bill 216-FN will allocate \$1.8 million in state funds in the first year of the upcoming biennium from the General Fund to provide services for individuals on the Priority One Development Disabilities waitlist. With a 50/50 Medicaid match, the bill will allocate a total of \$11.6 million to address the needs of people on the Priority One waitlist for the next two years. Family members are cur-

rently caring for the over 350 siblings, sons and daughters with development disabilities. But parents cannot care for their children forever, and brothers and sisters said the behavioral and medical issues are often beyond their control. Area agencies do the best they can, and we heard great things about the area agencies, but these families need our support. Recognizing the fiscal constraints New Hampshire is facing, the committee adopted an amendment which follows a five-year plan laid out by the Department of Health and Human Services, which will help take the pressure off these families and provide needed services to people who need them. The committee recommends ought to pass with amendment and I thank you Mr. President.

SENATOR BOYCE: Thank you Mr. President. I rise in opposition to the committee amendment as well as the bill itself. Although the bill is looking to put \$2.65 million in the appropriation for that waiting list each year of the biennium, there currently is a line-item that, I believe, the current budget includes \$3 million for each of those years. This would be in addition to that. There is no question that there is a need for the reduction of the waitlist; however, the entire budget needs to be considered as a whole and this line-item will be considered by the Finance Committees, both in the House and in the Senate as we assemble the budget. By passing this at this time, this will complicate the process of deciding which priorities of the state's needs come first. This will in effect, bind our hands as we try and settle the bottom line of the budget. We need to be free to do that. I would therefore ask that this not be passed and let the Finance Committees deal with it with the rest of the budget, all at one time. Thank you.

SENATOR LARSEN: Senator Boyce, when you say that this bill could in fact, bind our hands in terms of serving people on the Developmental Disabilities waitlist, do we not have our hands bound already by a commitment to care for people who have no other place to go, who by state law, as well as legal decisions, we are bound to, already, by state law and legal decisions, to serve through people with disabilities?

SENATOR BOYCE: We have obligations and we have obligations in other areas as well. This is one of the obligations and we have to look at the entire budget and determine what the priorities are for the entire budget and not just the individual pieces taken out of context. As I said, we have a substantial amount of money in that line today, as it came from the Governor. The question is whether or not we can find additional funds to put more money in that line when we get the budget done? We need to consider all of the other priorities of the state. We have bio-terrorism that we have to deal with, we have to deal with everything else in the budget, we can't pick and choose and say that this one thing needs to be fully funded, while something else may or may not. We need to look at the entire budget as a whole. That is what the Finance Committees will be doing as we consider the budget as we go on. This is one of the items that will be looked at very seriously. As I said, it will be dealt with and we have to decide where the money that we do have, is able to go. If this is indeed one of the items that comes to the top of the list then it will be taken care of.

SENATOR LARSEN: Thank you Mr. President. I believe that we are bound as caring people to the residents of the state of New Hampshire. I believe that we are bound as a community of people to care for those for whom there is no other way. People with developmental disabilities, many of these people on the waitlist are waiting for services from our



state because we have traditionally under-funded what we know is our moral obligation. I believe that we are bound as a community to support through our budget and move people off of that developmental disability waitlist. They have a legal right to these services. It has been decided in the courts. It has been decided on a moral basis. I think that a lot of people in this room understand that. I think that we can send a message as the Senate, that this is a priority for all of us. I think that it is a priority for the majority of us in this room. I urge you to pass SB 216 and encourage the Finance Committee to do their outmost to find that additional support. Thank you very much.

SENATOR O'HEARN: Thank you Mr. President. I have to agree with Senator Martel and Senator Larsen. The waitlist is the result of legislative action that this body took in the 70's when they closed the State Hospitals. Our developmental disabled people have been waiting ever since. In 1994, the legislature also acted. They required the area agencies then to find a place for our forensic population that are developmentally disabled and they came on the waitlist. The legislature funded it with one dollar. Since 1994, we have not put any money into the waitlist. Today, we are finding that even though there is money from the Governor, it is only \$1.5 from the general fund and the rest is a match from Medicaid. We are still not serving these people. I believe that it is the duty of government to take care of people who cannot take care of themselves. Families have taken on that burden with little or no help. These families have taken it on for their entire life. Whether it is a 35 year old person with spinal bifida or a 59 year old person with down syndrome, these parents that are aging, have asked for a little bit of support, a little bit of piece of mind to know that their children will be taken care of. These are people, and as a government, we should take care of these people. I ask for your support of SB 216.

SENATOR LARSEN: Senator O'Hearn, you mentioned Laconia State School, and maybe at the time you had researched this, I wasn't sure if you had seen this, but at the time that we closed the Laconia State School and since then, we made a commitment to serve people in the community rather than have them in an institution. Are you aware of that? I did a study... I asked the Legislative Budget Office a number of years ago now, to factor in what we would have paid as a state for care of people with developmental disabilities if we were still running the Laconia State School, just to factor in inflation. They came up with the number of \$110 million is what we would have been paying to run the Laconia State School, if we continued that. That is my recollection of some numbers given to me a number of years ago. You mentioned Laconia State School. Were you aware that we would have been spending that amount if we would have just kept running the Laconia State School, which I don't advocate, but I do advocate considering the money.

SENATOR O'HEARN: The numbers I am not aware of, but I am aware of that, back in the 70's, there was a major effort throughout the country to start closing down state hospitals, and that the best place to take care of our disabled community was in our local community; hence, the area agency was set up in order to do this. I think that it was model policy when New Hampshire did this to move forward. The problem is, New Hampshire has never fully funded it. I think this is the right approach and I think that we are doing the right thing today.

SENATOR LARSEN: Thank you.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise in support of the bill. When we de-institutionalized, we de-institutionalized New Hampshire Hospital as well as the Laconia State School. We did make a commitment. We made a commitment at the time to take people who were housed, who were actually warehoused in certain areas, and we said, "we are going to move you out of this environment and put you in an environment where you can integrate with society and you can get service." We haven't lived up to that. We closed those facilities. We had almost 3,000 people at the New Hampshire Hospital and we had 2,000 at the Laconia State School. As an executive counselor, I walked through those buildings. I visited every building at Laconia State School and I walked through New Hampshire Hospital. I saw how people were being treated. I saw how youngsters, who were put there at probably age two or three and were going to be there for the rest of their lives, were confined. They were confined in buildings with no windows. Were supervised by people sitting up on a pedestal. You talk about the human snake pit and the human jungle. I saw it. We made a commitment to those people to service them. We must stand by that commitment. We closed those institutions. We had the courage to close them, but lowest common denominator, we closed it because we thought that it would be cheaper to treat them on the outside and we haven't lived up to our responsibilities. Thank you Mr. President.

SENATOR FLANDERS: Thank you Mr. President and members of the committee. I just want to take a minute to relate a personal story that happened about a month ago in Peterborough. I am new to this other than my wife does work at Crotched Mountain and has been there for many, many years. I went to Peterborough to a family who had a little girl. She must have been in her early teens. I went in and sat down and Senator Peterson was there, and after Senator Peterson left because he had another appointment, the little girl came and sat next to me because I coughed and went like this. She came over to me and said "are you okay?" and I said, "yes, I am okay." She stayed there and she said, "would you hug me?" So I put my arm around her and I gave her a hug and then I took my hand off and she said, "no, please hug me". She sat there for over half an hour and I hugged her. She cuddled up to me and was just as nice as could be. My thought is that we vote this and send it to Finance and we ask Finance to find every penny that they can so that this young girl when she is 21 years old is not abandoned. It is a true story and there are 360 some odd just like her on the list. Let's see what we can do and try and help them. Thank you very much.

### **Amendment adopted.**

Senator O'Hearn offered a floor amendment.

Sen. O'Hearn, Dist. 12

Sen. Below, Dist. 5

**March 20, 2003**

**2003-0906s**

**05/10**

### **Floor Amendment to SB 216-FN-A**

Amend the bill by replacing section 1 with the following:

1 Appropriation; Funding Developmental Services Priority Waiting List. There is hereby appropriated to the department of health and human services for the purposes of providing services for individuals with developmental disabilities who are identified as priority level one,

as defined in section 2, the sum of \$3,600,000, of which \$1,800,000 shall be from general funds and \$1,800,000 shall be from federal funds, for the fiscal year ending June 30, 2004; and the sum of \$8,000,000 of which \$4,000,000 shall be from general funds and \$4,000,000 shall be from federal funds, for the fiscal year ending June 30, 2005. Such funds shall be in addition to any other funds appropriated to the department of health and human services. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

SENATOR OHEARN: Thank you Mr. President. I would like to thank the committee for their work on this and I would like to thank Senator Below for working with me on finding an amendment that we could then send over with this bill to Finance, in order to move this forward. The reason behind this amendment is looking at the results of a piece of legislation that we sent to health and human services back in 2000. That was a piece of legislation asking them to come up with a plan to fully fund the waitlist over a period of time. That was renewing the vision. That piece from the Department of Health and Human Services came out November 1, 2000 and we have not acted on that yet. This is an attempt to at least take a look at how we can start funding the waitlist over a period of time. This calls for \$1.8 million of general fund dollars and \$1.8 million of federal fund dollars the first year. In the second year, \$4 million of general fund dollars and \$4 million of federal fund dollars. It shall be in addition to any funds appropriated to the Department of Health and Human Services. I believe that this is the right start and the right thing to do. I ask for your support for this floor amendment. Thank you.

SENATOR BELOW: Thank you Mr. President. I rise in support of the floor amendment. I appreciate the work of Senator O'Hearn, Senator Martel and others who are concerned about this issue. I think that this does accurately reflect the policy recommendation of that renewing the vision concept in a legislative study committee several years ago, recommended that we **TAPE CHANGE** we needed to reduce...shorten the waiting list by about 20 percent, according to health and human services current estimate in the next fiscal year and by the end of this next biennium, to reduce the waiting list by about 40 percent. So it doesn't try and do it all at once like the bill did as introduced. It is realistic. It is simply a policy statement that it is our goal to recommit to that idea of trying to reduce over five years and try to take the first two steps in the next biennium. Certainly the Finance Committee is going to have to look at this and see if we can go more if we can or adjust it otherwise as we have to, to balance the budget. But I think that it is an important expression of intention. I think that it is also important to note that although the Governor, I think, shares this intention and certainly said that he hoped to see us reduce the waitlist through the budget. What we have heard in the hearings and presentations on the budget is that although there is \$3 million put into the budget for reducing the waitlist, there was over \$3 million cut from the very line-items that served the very same population, so the Department of Health and Human Services did testify that as the budget, as recommended by the Governor, would actually result in the waitlist continuing to grow. It would result in the continuing growth in the waitlist and not a reduction, so this expresses the intent that we provide sufficient funding, I think, that within the regular budget, to not grow the waitlist, but we go beyond that and start to shorten it. So thank you.

SENATOR BOYCE: I was going to ask a question, but I guess that I will make it a question to the entire Senate since it appears that possibly the entire Senate, with my exception, thinks that changing the priorities to make this a priority makes sense. Now, understanding that, I then need to ask the other members of this Senate, where in the budget they would like me to recommend when we get to the Finance Committee work on the budget, where do we take almost \$6 million of general funds, elsewhere in the budget? Is it the LCHIP Program? Is it the Revenue sharing with the towns and cities? Is it education funding? Is it somewhere else in health and human services? I need to know, when we get to the negotiations on the budget, I need to know, Senator Green needs to know, Senator Below needs to know, we need to know where the money comes from? The Governor has already said that he will not sign any new revenue bills. We have to live within our means, and since we are apparently saying that this is a 'need', that means that it is a 'need' in the budget and 'needs' to be funded, and we 'need' to know what doesn't 'need' to be funded? So when push comes to shove, if LCHIP is not funded, that is the decision that we have to make. If we decide not to fully fund revenue sharing with the cities and towns, that is a decision that you are making today for future purposes. I just need to make sure that you all understand the decision that you are making in sending this bill forward in this manner. You are saying that this is a priority and something else, somewhere else, in the budget, is going to have to be cut. So when we have to make those tough choices, I want to make sure that you all understand that is where we are going. So yes, we can find \$6 million for this. We can do that. I think that LCHIP is \$6 million. Is this more important to you than LCHIP? Is this more important to you than revenue sharing with your cities and towns? If you say yes, vote for this and we are all in good shape. Thank you.

SENATOR SAPARETO: Since I don't have an answer for the Senator, I will also ask then where will the approximately \$50 million over the next eight years, for the support of these poor souls, coming up, where will the money out of the state budget come from, LCHIP, plus what else and what other additional programs because this is a money saver, not a cost bill?

SENATOR PETERSON: Thank you Mr. President. I would like to add my voice in support of this amendment and in support of those who have spoken before on the amendment and on the bill. Earlier today, the Governor signed the first bill that we have brought through the legislature this year. A bill relating to government efficiency, which I was proud to sponsor in the Senate along with others. These community based programs which provide services to, in this case, the disabled, but also in other cases, the mentally ill, and the elderly, are indeed, programs which represent a model of government efficiency in our state. These are tasks that we must undertake and which if undertaken in an institutional setting, would cost by any reckoning, hundreds of millions of dollars more per year, as you look across these categories. I understand with others in this chamber, that we are in tough budget times. At the very meeting which Senator Flanders referenced, I stood and said to those assembled, that the amount of money that they were looking for to eliminate the disabilities waiting list was coincidentally, exactly to what was proposed at that time for the LCHIP as Senator Boyce has just noted. I know that we have tough choices ahead, however, I feel that if we, in our need to reduce our budgetary obligations, end up eviscerating a system of community based healthcare in our state, the cost to our state will

be such that it will require major taxes to keep up with them, therefore, I support this policy statement before the Senate and will follow it to Finance, and look to find the money to make it possible. Thank you.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

SENATOR GREEN: If I vote for this amendment, am I not voting for the policy and not the money?

SENATOR EATON (In the Chair): If you agree with the amendment and the bill, you will vote for it. If you don't agree with it, you will vote against it.

SENATOR GREEN: Thank you.

**A roll call was requested by Senator Sapareto.**

**Seconded by Senator Flanders.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Below, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Morse, Cohen.**

**The following Senators voted No: None.**

**Yeas: 21 - Nays: 0**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

Senator Estabrook is excused.

**SB 142-FN**, relative to advertisements on utility poles and highway signs. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Below for the committee.

**Senate Transportation**

**March 12, 2003**

**2003-0675s**

**06/09**

### **Amendment to SB 142-FN**

Amend the bill by replacing section 1 with the following:

1 Advertisements Prohibited. RSA 236:75 is repealed and reenacted to read as follows:

236:75 Advertisements Upon Certain Objects Prohibited.

I. In this section:

(a) "Advertisement" shall mean any advertisement or sign, including but not limited to leaflets and flyers.

(b) "Object owner" shall mean the owner or joint owners of any object.

(c) "Advertisement owner" shall mean the owner of any advertisement and shall also include any person who places any advertisement on an object in violation of this section.

(d) "Object" shall mean any object of nature, utility pole, street light, telephone booth, traffic control device, highway sign, or highway appurtenance.

II. Notwithstanding any provisions of the law to the contrary, it shall be unlawful to affix, attach, or display any advertisement upon any object, directly in such a manner that the object is utilized as an integral part of the sign's support as distinguished from being only incidentally a

support to the sign, such as the earth or ground upon which a sign is affixed. This prohibition shall extend to all primary and secondary highways and roads of and within the state without exception for any type of advertising. This prohibition shall not extend to the placement of advertisements when such placement has been specifically approved by the object owner. The owner of any object upon which an advertisement is placed in violation of this section shall be entitled to remove and destroy the advertisement, at the expense of the advertisement owner, without prior notice to the advertisement owner, and the advertisement owner shall not be entitled to damages or compensation therefor. The object owner shall be entitled to payment by the advertisement owner for the costs associated with removal and destruction of the advertisement by that object owner or the object owner's agents or employees. Any municipality may remove and dispose of any advertisement placed on an object within a municipality's public right of way in violation of this section, without prior notice to the advertisement owner.

III. Whoever violates this section shall be guilty of a misdemeanor if a natural person or a felony if any other person.

**2003-0675s**

#### AMENDED ANALYSIS

This bill prohibits advertisements, leaflets, or flyers, on natural objects, utility poles, street lights, telephone booths, traffic lights, highway appurtenances, or highway signs without the approval of the object's owner and increases the penalty for violations. It also allows municipalities to remove advertisements in the public right of way without notice to the advertisement owner.

SENATOR BELOW: Thank you Mr. President. I move SB 142 ought to pass as amended. This bill prohibits advertisements, leaflets, or flyers, on natural objects, utility poles, streetlights, telephone booths, traffic lights, highway appurtenances, or highway signs without the approval of the objects owner and increases the penalty for violations to a misdemeanor. The bill also allows the owner of the object and municipalities to remove advertisements from such objects within public rights-of-way without notice to the advertisements' owner. We're all familiar with these signs advertising the latest diet or a quick-rich scheme how to make money from home or something like that. Most of us just pass them off as an eyesore, but to utility workers they can be a serious safety hazard. Nails, staples, and strapping frequently, left behind on utility poles when signs are taken down, rip insulation gloves, and damage ropes the workers use. We shouldn't endanger the safety of these hard working men and women for the sake of a cheap way to advertise. Senate Bill 142 has the support of the Department of Transportation and the New Hampshire Electric Coop. I believe that you will hear a floor amendment that the committee discussed and supports, that fixes another problem in the bill. I do move that SB 142 ought to pass as amended and request your support. Thank you.

SENATOR BOYCE: Senator Below, I am just curious. It says in "d" under "object", "any object of nature".

SENATOR BELOW: Yes.

SENATOR BOYCE: I am curious what an "object of nature" is because you know when I was out putting out signs for my campaign, I drove them into the ground, and a pile of dirt, I think, is probably an object

of nature. There was another case where the only thing that was there was a ledge outcropping, and I wedged the stake in between the crack on the rock and then put my sign on the stake. Would that have been an object of nature that I was attaching to in that case?

SENATOR BELOW: That is a good question. I think that the idea of an "object of nature" was something like a boulder or possibly a rock ledge, not the ground itself. The intent was not to cover something stuck into the ground or sitting upon the ground, but rather to address things that stick up out of the ground, if you will, mostly manmade, but the thought was also to cover boulders for instance. There is separate law considering political signs although this does pick up and cover those to the extent that they are affixed, attached to an object such as described in the bill. So there might be a problem with sticking your sign into a ledge. It would allow the municipality or the owner of that, if it is some other entity, to remove that without notification to you.

SENATOR BOYCE: If it was a piece of ledge on a private property, that was outside of the highway right-a-way, but was the only available land upon which to affix the sign, and the owner of the property gave me permission to put my sign out there, was that....

SENATOR BELOW: You would have no problems. This only covers where there is not permission. There is a provision that says that without the permission of the owner. It really only concerns the publics' rights-of-way, so if it is on private property, that is between you and the owner of that land. But it does cover utility poles that might be on private property where the utility pole is owned by the utility, it allows the utility to remove the signs whether it is the publics right-of-way or not. If they own the object, they can remove the sign if it wasn't put there, if they don't want it there.

SENATOR BOYCE: I just want to be sure. He did give me permission to put it there next time.

SENATOR BELOW: If you have permission, not a problem.

### **Amendment adopted.**

Senator Kenney offered a floor amendment.

Sen. Kenney, Dist. 3

**March 20, 2003**

**2003-0905s**

**06/10**

### **Floor Amendment to SB 142-FN**

Amend RSA 236:75, I and II as inserted by section 1 of the bill by replacing it with the following:

I. In this section:

(a) "Advertisement" shall mean any advertisement or sign, including but not limited to leaflets and flyers.

(b) "Object owner" shall mean the owner or joint owners of any object of nature, utility pole, telephone booth, or highway sign.

(c) "Advertisement owner" shall mean any person who places any advertisement on an object in violation of this section.

(d) "Object" shall mean any object of nature, utility pole, telephone booth, or highway sign.

II. Notwithstanding any provisions of the law to the contrary, no person shall affix, attach, or display any advertisement upon any object, directly in such a manner that the object is utilized as an integral part

of the sign's support as distinguished from being only incidentally a support to the sign, such as the earth or ground upon which a sign is affixed. This prohibition shall extend to all primary and secondary highways and roads of and within the state without exception for any type of advertising. This prohibition shall not extend to the placement of advertisements when such placement has been specifically approved by the object owner. The owner of any object upon which an advertisement is placed in violation of this section shall be entitled to remove and destroy the advertisement, at the expense of the advertisement owner and the advertisement owner shall not be entitled to damages or compensation therefor. The object owner shall be entitled to payment by the advertisement owner for the costs associated with removal and destruction of the advertisement by that object owner or the object owner's agents or employees. Any municipality may remove and dispose of any advertisement placed on an object within a public right-of-way within the municipality in violation of this section, without prior notice to the advertisement owner.

SENATOR KENNEY: Thank you Mr. President. I rise to offer a floor amendment. Mr. President and members of the Senate, as you go down to the floor amendment, which will be section I, paragraph c, "Advertisement owner" "shall mean any person". Currently, the way that it was written, it shall mean any owner of any advertisement. We did not want to enter into an arrangement where if it were a political campaign sign that was placed by an individual that didn't have authority to do that, then that political campaign would be subject to penalty or it could be a corporate sign that was placed on a right-of-way that was done by a third party who did not have the authority, therefore the blame could go back to that corporation who owns that sign. We just wanted to narrow that definition to include "Advertisement owner" "shall mean any person who places any advertisement on an object in violation of this section."

SENATOR BARNES: Thank you Mr. President. We have a law in place now, Senator Kenney, that tells politicians that signs have to come down after a certain time. I still see political signs up in my district leftover from November. So my question is, who is going to police this and do we really have any teeth or is this just another piece of legislation on the books that is meaningless without somebody taking care of it and doing something about it?

SENATOR KENNEY: Thank you for the question Senator Barnes. Senator Below mentioned that the owner of that right-of-way would have the ability to take that sign down. So I would think that that would clarify it.

SENATOR BARNES: Thank you.

SENATOR MORSE: I would like to add further to that. The clarification here is that the municipality can now deal with this. There was some skepticism with the municipalities going and picking up any of these signs, and now they have the authority with this legislation.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. This thing snowballed. It started out with one telephone company coming in and saying that they are tacking them to their telephone poles and then it went and went and went. Basically, if I understand the law correctly, the telephone company has to notify people before they take the signs down from their poles. What we wanted to do was for them to be able to take it down when they first saw it. That is the in-



tention of this. We have broadened it out so that...we had individuals come in and testify and say, "well there is a sign out in front of my house and I want it taken down. I want to go and rip it down". We modified it, so that they can call the police department or the highway department and they can go and take it down without notice. That is where we want to be. I hope that is where we are at. Thank you.

SENATOR BELOW: There is a little more teeth in this that may be of help. If the utility has a problem with somebody putting a whole bunch of these out, and they feel that it is worth their while, the bill also allows them to collect the cost for the removal from the owner of the sign. That doesn't exist currently in law, so potentially, somebody like a utility has some recourse. Sometimes you see these all over the place, so that may be a factor in the future.

SENATOR GATSAS: Senator Flanders, when you said that somebody... I could call the Highway Department if you had a sign on my lawn?

SENATOR FLANDERS: No. I am sorry.

SENATOR GATSAS: If I could finish the question.

SENATOR FLANDERS: I am sorry.

SENATOR GATSAS: If there was a sign on my lawn, I could call the Highway Department and have that sign removed if I didn't want it there?

SENATOR FLANDERS: That is not the intent.

SENATOR GATSAS: Okay.

SENATOR FLANDERS: The intent is...some of you have seen on telephone poles... like some that I have seen right now...people are drilling artesian wells. They put the artesian well machine up and they go out and put a sign out on the telephone pole, and somebody wants to be able to take that off. That is the intent of this bill. Political signs are not supposed to be involved. If you put a sign in your front yard...there was one proposal that wanted individuals to rip down signs and we opposed that and said, okay call the Police Department. Hopefully, the Police Department will check and make sure the sign is legitimate.

SENATOR GATSAS: Thank you.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 182**, relative to releasing information from motor vehicle records. Transportation Committee. Inexpedient to legislate, Vote 4-1. Senator Martel for the committee.

SENATOR MARTEL: Thank you Mr. President. I move SB 182 inexpedient to legislate. The bill would permit certain insurance companies, self-insured entities, and members of the New Hampshire Bar access to an individual's motor vehicle records. Senate Bill 182 is unnecessary and intrusive of an individual's privacy rights. The Department of Safety already has a system that allows private investigators and attorneys access to the DMV records if they can show proof that they need the records for the use in ongoing litigation. In place of passing SB 182, Assistant Commissioner Stephen has agreed to work with his staff to streamline the process. The committee feels that the Department's ef-

forts will sufficiently address any information access problems while protecting the privacy rights of our constituents. I move SB 182 be inexpedient to legislate. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 196**, establishing a committee to study the inspection and fees for sanitary transportation of seafood. Transportation Committee. Inexpedient to legislate, Vote 5-0. Senator Morse for the committee.

SENATOR MORSE: Thank you Mr. President. I move SB 196 inexpedient to legislate. This bill establishes a committee to study the inspection fees for the sanitary transportation of seafood. At this time, the Transportation Committee does not feel that there is a need for a more in-depth study of seafood transportation. We heard no testimony from the public health officials or seafood carriers in support of this bill. I move SB 196 be inexpedient to legislate and request your support. Thank you.

SENATOR FLANDERS: Thank you Mr. President. If you notice the prime sponsor is Senator Prescott. I don't want people to think just because he is not here today that we are doing this behind his back. What happened was Representative Moore, who I am sorry that I don't know, came to Senator Prescott and asked him to put this in after their deadline. Senator Prescott did come and explained exactly what I just said and Representative Moore did not come, so therefore, we didn't even know what the problem was. So we are not doing something behind Senator Prescott's back. I have discussed it with him. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 102-FN**, relative to the computation of tax on certain telecommunications services under the communications services tax. Ways and Means Committee. Ought to pass with amendment, Vote 3-2. Senator D'Allesandro for the committee.

**Senate Ways and Means**

**March 13, 2003**

**2003-0715s**

**09/10**

**Amendment to SB 102-FN**

Amend RSA 82-A:2, V(e) as inserted by section 2 of the bill by replacing it with the following:

(e) Charges for services which are not subject to tax under RSA 82-A to the extent that the charges for such services are disaggregated and separately identified from other charges on the customer's bill, or in instances where the provider does not separately list charges for taxable and non-taxable communication services, such charges shall be subject to the taxes imposed by this chapter, unless the provider can reasonably identify charges not subject to such tax from its books and records kept in the ordinary course of business. A taxpayer may not rely upon the non-taxability of charges for telecommunications services unless the taxpayer's provider separately states the charges for non-taxable telecommunications services from taxable charges or the provider elects, after receiving written notice from the taxpayer in the form required by the provider, to provide verifiable data based upon the provider's books and records that are kept in the regular course of business that reasonably identify the non-taxable charges;

Amend the bill by replacing section 4 with the following:

4 Communications Services Tax; Definition; Place of Primary Use. RSA 82-A:2, XXI is repealed and reenacted to read as follows:

XXI. "Place of primary use" means the street address representative of where the taxpayer's use of the telecommunications service primarily occurs, which must be:

(a) Either the residential street address or the primary business street address of the taxpayer; and

(b) In the case of mobile telecommunications services, within the licensed service area of the home service provider.

Amend the bill by replacing section 8 with the following:

8 Applicability. This act shall apply to bills issued on or after January 1, 2004; provided, however, in the case of private communications services, if information on mileage is not available, the department of revenue administration may allow the application of the apportionment rules in RSA 82-A:2, XIII to prior periods and provided further, in the case of a post-paid calling service, the carrier shall be allowed a transition period from January 1, 2004 through June 30, 2004 in which to change its tax systems to conform with the provisions of this act.

SENATOR D'ALLESANDRO: Thank you Mr. President. I move ought to pass as amended on SB 102 which clarifies the tax treatment of telecommunication services. The bundling of communications services, including the internet, telephone, cable and others, are packaged for customers as if they are one single service. Our tax structure sees the situation differently. Senate Bill 102 will require companies to show which portion of the bundled services are taxable, and which are not, under state law. The amendment also defines the "place of primary use" for tax purposes and allows a grace period for companies to bring their systems up to speed. The fiscal impact of this bill is neutral and the committee voted ought to pass with amendment. We urge the Senate to do the same. Thank you Mr. President.

SENATOR BOYCE: I rise in opposition. This bill was put together, partly as model legislation from other places, and also in consultation, mostly with the big players in telecommunications. The big companies in telecommunications have no problem with this, in fact, they like it. The problem that came about, that I became aware of, was for the smaller companies that have telecommunications setup, which are things like your cable access to the Internet, access to the Internet. One person that testified said that it was from schools and small businesses, he would set up the connection to the Internet from their places of business and from the schools. The problem there is that in these small companies way of doing business, they don't sell an unbundled product. My cable company does not offer an unbundled cable access to the Internet. They have one price, one size fits all. There are some things that you can add to it, but there is nothing...they don't break down what part of the bill is the actual connection from my home to their substation. They don't break out the cost of the web page access that I have. I can store a web page with them. They don't break out the cost of the email service part of it. They don't break out any of that because, first of all, they do not have any competition for those services. They are the only cable company that I have access to. They are the only high speed Internet access that I can get. I am too far from the phone company to get DSL, so there is no reason for them to offer a smaller unbundled situation. So what happens is, in that situation, the entire \$40 or so, that it costs me per month to access the Internet through the cable system is taxable, under this bill; however, before I had that access through the cable, I had access on a dialup system, and in that

situation, my dialup situation to the Internet, the Internet connection itself, was not taxed. What was taxed was the phone line that I used for nothing other than accessing the Internet. I had two phone lines. I was paying on the \$14, I was paying tax on the \$14 a month that it was costing me for the phone line, but not on the \$29 a month that I was paying for the Internet connection. When I went to the cable company and got access through them, I got one bundled connection. I got in effect, the phone line part of it and the Internet connection part of it. To my way of thinking, I probably should be paying the tax based on maybe the \$14 that it would cost to put the phone line in, but I should not be paying tax on the full \$40. The way that this is being interpreted and the way that the current law is being interpreted by the DRA is that the entire \$40 connection is taxable because, under this bill, the company does not offer it as an unbundled service. They only offer the entire bundle. Now if AT&T was offering a bundled service and they were not offering separate from that, a phone line connection, a basic phone line connection, they were only offering the long distance service, the local long distance, the voice mail, all of the things that they put into this bundle, if they didn't offer it separately, they would have to tax the entire bundle. Because they are in the very competitive part of the telecommunications business, they do offer unbundled services. The situation is the little guys and their customers suffer because they cannot and do not, unbundle the service so that the customer of a cable company for access to the Internet, has to tax the entire \$40, whereas if AT&T decided that they would get into that competitively and decided that they would only charge...that they would offer access to the Internet alone, without the bundled services, then they could have their customers taxed at a lower rate than somebody else who was not able to unbundle. I think that this may be very wonderful for the big companies, but I think that we need to put a little more consideration into it before we go further with it, so that it does...make sure that it does not disadvantage the small companies and their customers, the ratepayers. So what I am going to ask is that we vote down the committees recommendation and vote to rerefer it to committee so that we can spend a little more time making sure that it does not hurt the small guys and the ratepayers of the small guys. Thank you.

SENATOR GREEN: Thank you Mr. President. I rise in opposition to the bill as presented. I would go along with the issue of rereferral. I think that it needs some more work. I don't think that many of us in this chamber really understand, technically, what this will do. My biggest concern about it is that a lot of the people that it was referred to was the small businesses being taxed in a way which is being interpreted by DRA, the way in which they should tax them. That is creating a major problem in terms of their taxes onto this tax. It is clear to me that this bill will help DRA accomplish what they have already been trying to do. The biggest thing that has bothered me about it is that they have really tried to bully some of the small businessmen into paying it and into saying, basically, we don't care what the law is, this is what you have to pay. I don't like that kind of approach when you are dealing with small businesses or individuals. It is the wrong approach. This is a bailout piece of legislation at this point in the game, because they don't know how to fight it. They don't know what to do about it. I don't think that we should be passing legislation until we all, in this chamber, understand exactly what it does to everybody. I would ask you to either defeat this and entertain another motion so that we can look at this further. Thank you.

SENATOR D'ALLESANDRO: Thank you Mr. President. We all have concern for the taxpayer in the state of New Hampshire as well we should. We realize that telecommunications is moving at a very rapid rate. Changes are taking place at a very rapid rate. Senate Bill 102 ensures that New Hampshire's consumers pay taxes only on the components of a bundle communication offering that New Hampshire chooses to tax. There is a grace period of almost a year, which allows all of the companies in New Hampshire to come into line. What the bill ensures is that nobody in New Hampshire pays a tax that it shouldn't be paying. It allows a period of time for this to take place. This grace period. Now we know that about 12 states in the United States, have accepted this policy. We also know about the evolving nature of telecommunications. We know about bundled service. The ability to unbundle that service and to tax only what New Hampshire taxes under its communications tax. With this in place, we are a revenue neutral situation. Nobody is paying any more. Anyone who does not pay the tax now, will not pay the tax under this provision. It is a revenue neutral situation, but it is a clarification that puts us in line with what is happening in the rest of the country, that is why we need the legislation. With regard to DRA. I really can't answer for DRA. We know that DRA is sort of in a state of flux right now. We don't have a commissioner there. So what has happened in the past is that negotiations have taken place with DRA, with Stan Arnold as commissioner, and he has been a major player in this. So we assume that that synergy that took place between the companies and DRA not only included large companies, but the small companies. What we are doing, and it is strongly supported by members of the other body, the House, Norm Major who can't be here, was a cosponsor with me on this piece of legislation, chair of Ways and Means in the House. We see this as an essential bill. A bill that we should pass today and move it on because it is in the best interest of the New Hampshire taxpayer that we move on this today. Thank you Mr. President.

SENATOR BELOW: Mr. President, is it correct that this bill will be referred to the Finance Committee if we pass it today, for further consideration?

SENATOR EATON (In the Chair): It will not be referred to Finance.

SENATOR BELOW: Oh, it won't, even though it has an FN? Can it be referred to Finance or are you just saying that is not your intention?

SENATOR EATON (In the Chair): It was a revenue neutral bill.

SENATOR BELOW: Okay.

### **MOTION TO TABLE**

Senator Green moved to have **SB 102-FN** laid on the table.

A division vote was requested.

**Yeas: 11 - Nays: 9**

**Adopted.**

### **LAIID ON THE TABLE**

**SB 102-FN**, relative to the computation of tax on certain telecommunications services under the communications services tax.

### **MOTION OF RECONSIDERATION**

Senator Below, having voted with the prevailing side, moved reconsideration on **SB 212**, requiring fiscal impact statements for interim ad-

ministrative rules and prohibiting agencies from requiring by rule the submission of social security numbers, whereby we ordered it to third reading.

SENATOR BELOW: I rise to speak to my motion. This bill was one that we passed in our last session. It concerns...it requires fiscal impact statements for interim administrative rules and prohibits agencies from requiring by rules, submission of social security numbers unless they are required by law. In the course of the discussion on the bill, Senator Gatsas raised a concern about the implementation dates. A floor amendment was drawn and we adopted that, but in doing so, I inadvertently asked us to vote down the committee report because it wasn't quite compatible to the floor amendment, and we accidentally lost part of the committee report. So if we reconsider this, we can consider an amendment that would restore the bill to how it was intended to come out of committee.

**Adopted.**

**SB 212**, requiring fiscal impact statements for interim administrative rules and prohibiting agencies from requiring by rule the submission of social security numbers.

Senator Below offered a floor amendment.

Sen. Below, Dist. 5

**March 20, 2003**

**2003-0908s**

**10/05**

**Floor Amendment to SB 212**

Amend RSA 541-A:22, III(h) as inserted by section 2 of the bill by replacing it with the following:

(h) Require a submission of a social security number unless mandated by state or federal law.

SENATOR BELOW: I rise to offer a floor amendment.

SENATOR BARNES: Are we going to get a copy of 212?

SENATOR EATON (In the Chair): That should be being passed out, hopefully.

SENATOR BARNES: That about the bill itself?

SENATOR EATON (In the Chair): That is what I thought. You shall have that.

SENATOR BELOW: Our actions on the bill are on page 101 of the bill, but that doesn't have the body of the bill itself. I shall continue on. All that the amendment does is add the phrase "Require a submission of a social security number" already in the bill and in the law. It adds the phrase "unless mandated by state or federal law" which was part of the committee amendment that we inadvertently didn't adopt. So what the context of this is, it says things that agencies should not do through administrative rules and so it would make it clear that they would not, should not require submission of the social security number unless mandated by state or federal law. The effective date that we adopted, at Senator Gatsas' gesture, remain in effect, which is a staggered effective date on the two different parts of the bill.

**Recess.**

**Out of recess.**

SENATOR BELOW: Now that you have the bill and the amendment in front of you, and as you can see, it simply adds the words “unless mandated by state or federal law”, which in fact was the substance of the committee amendment that we inadvertently defeated last week. Senate Counsel brought this to my attention and that is why we are bringing it back.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

### **MOTION TO REMOVE FROM THE TABLE**

Senator Sapareto moved to have SB 154 taken of the table.

**Adopted.**

**SB 154**, relative to landlord access to rental properties.

**Question is on the adoption of the floor amendment (0622).**

SENATOR LARSEN: I would move to withdraw amendment #0622 and to introduce floor amendment 0693 in its place.

SENATOR EATON (In the Chair): Without objection, we will replace amendment #0622 with amendment 0693.

Senator Larsen withdrew her floor amendment.

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist. 15

**March 13, 2003**

**2003-0693s**

**08/01**

### **Floor Amendment to SB 154**

Amend the bill by replacing section 1 with the following:

1 Landlord and Tenants; Prohibited Practices. Amend RSA 540-A:3, V to read as follows:

V. No tenant shall willfully refuse the landlord access to the premises to make necessary repairs, *for the purposes of health and safety inspections, code compliance review, insurance appraisal, and real estate rental and sales requirements* at a reasonable time after notice which is adequate under the circumstances.

**2003-0693s**

### **AMENDED ANALYSIS**

This bill grants a landlord access to rental property for certain reasons.

SENATOR LARSEN: Just to not keep you any longer than you need to be here today, the floor amendment corrects what we were trying to do originally when this bill was tabled. It says that when you are talking about landlord/tenant issues of who can enter a leased property, it says that “No tenant can willfully refuse the landlord access to the premises to make repairs”. That is where the other amendment had neglected to leave the repair language in that is current law. The new language says that they can also enter “for the purposes of health and safety inspections, code compliance review, insurance appraisal, and real estate rental and sales requirements at reasonable time after notice”. What this amendment does is it qualifies who can enter...at what point a landlord can enter the

private leased property of another person, under what conditions. As you might recall when I explained this to you earlier, what we did in the Public Affairs Committee was write down all of the issues which people came to us as reasons why they need to enter another persons property with notice. Repairs, health and safety, clearly covers some of the things that we heard in Public Affairs. We heard for example, that one person was keeping large amount of garbage in his apartment, causing cockroaches to appear. We heard that there are times when a code inspector needs to come into an apartment. We heard that there are times when an insurance appraisal needs to be done and certainly there are times when a rental or a sale are being considered and that people need to enter another persons private space. **TAPE CHANGE** today is...we currently have a very, very restrictive language which allows a landlord to only enter another persons property for a repair. Our job is to balance the interest of those who have...who are renters with the interest of those who are landlords. Our state has done a pretty good job of landlord/tenant relations over the years and balancing those interests. We felt that this floor amendment is the right way to expand landlord requirement needs, yet balances the privacy requirements of so many of New Hampshire's people who are in fact renters. I urge you to support this floor amendment.

SENATOR FOSTER: I rise in support of the amendment. After last weeks session when the bill was tabled, we tabled it because we learned that the previous section of the law says "that no landlord shall willfully enter into the premises of the tenant without prior consent other than to make emergency repairs". The law also allows a landlord in "to make repairs upon reasonable notice". That is the current state of the law. We heard that judges weren't letting folks in and I wondered why and looked at the law and found that is why. I also went back and did a legislative history to find out why the law was passed when it was passed. What I found was that there was substantial testimony given at the time whereby landlords were entering the premises, particularly of single women, at all hours of the day, without their consent and harassing them. That is why the provision was put into the law at that time, prohibiting a landlord from entering the premises except for emergency repairs. That was a real concern and there was substantial testimony about it, and that is what lead to the law. I understand that in the committee, there was testimony that just "repairs" wasn't enough. I think that this amendment goes further and puts in the other issues of concern that were raised, but we still will have a good balancing between the rights of the landlord and the rights of the tenant. Yes, the landlord owns the property, but there is that concept of quiet enjoyment, a man or woman's home is their castle, and just because you happen to be a renter, doesn't mean that the landlord ought to be able to come in at any time. I think that this goes in the right direction. I suppose that in the future, if we find there are other reasons that we need to amend the law further, that is coming up, we can do it, but let's move slowly in an incremental fashion and not just open up the door completely. I would also support the amendment and ask for your support as well.

SENATOR LARSEN: Senator Foster, that testimony that you found, it dates back a number of years?

SENATOR FOSTER: Yes it does. It was in the mid 70's.

SENATOR LARSEN: I would only point out that as recently as three months ago, I did receive a call from a woman who was concerned that her landlord was regularly entering her apartment and I think that I



told you this at our last session, that she became very concerned because she had a very affordable apartment and if she stood up to the landlord and said that he couldn't come into her property, he was saying that he had to fix this, he had to fix that. She was concerned that if she stood up and said "you can't come in my property", that she would lose what was an affordable place for her and her three children. She didn't feel that she had the ability to stop this harassment, so it does in fact, continue today. So I was curious, my question was relating to how long ago that happened and obviously it is an issue which all of us ought to be concerned about over time, and that is why I say that we need to support the amendment.

SENATOR FOSTER: Yes, matter of fact, my testimony was that people with affordable apartments were being harassed and felt that they didn't really have the right to say no. That lead to passage of the legislation.

**Question is on the adoption of the floor amendment.**

**A division vote was requested.**

**Yeas: 4 - Nays: 16**

**Floor amendment failed.**

Senator Sapareto offered a floor amendment.

Sen. Sapareto, Dist. 19

**March 20, 2003**

**2003-0917s**

**08/03**

#### **Floor Amendment to SB 154**

Amend the bill by replacing all after the enacting clause with the following:

1 Landlord and Tenants; Prohibited Practices. Amend RSA 540-A:3, V to read as follows:

V. No tenant shall willfully refuse the landlord access to the premises to make necessary repairs, *or to perform other reasonable and lawful functions commonly associated with the ownership of rental property*, at a reasonable time after notice which is adequate under the circumstances.

2 Effective Date. This act shall take effect January 1, 2004.

**2003-0917s**

#### **AMENDED ANALYSIS**

This bill grants a landlord access to rental property to make repairs and for any other reasonable and lawful purpose.

SENATOR SAPARETO: Mr. President, I rise to offer a floor amendment. What I did was to address the Senators' concerns. We included "or to perform other reasonable and lawful functions" under the Senators description of the abuse of the current statute. We addressed that. That would not fall under a lawful function as commonly associated with the ownership of the property, so we feel that that was able to cover it. This amendment also seems to clarify the discrepancy between 540-A:3, IV and V, one which refers to the "no prior consent for emergency repairs" which is item IV, and V which is replaced with this amendment. So after draft from legal counsel, we feel that this is now going to clear up that discrepancy and proceed with the intent of the original bill.

SENATOR D'ALLESANDRO: Thank you very much Mr. President. Just a quick point. "To perform other reasonable and lawful functions". What is "reasonable" to one person is not reasonable to another person. I think that we have that discussion and debate constantly in this chamber. Who ascertains what is reasonable? Who makes that decision? The person who wants to get into the apartment or the person who has the apartment and who is living in the apartment and if it, by one sense is reasonable, but in the other sense is not reasonable, do we have a confrontation or do we call the police and say "mitigate this dispute" or "mediate this dispute". So I think that when you put "reasonable" in a situation and you ask that to be interpreted by the landlord and the tenant, you create another problem. I don't think that we are looking to create problems, we are looking to solve them. It just seems to me that creates another one. Thank you.

SENATOR BELOW: Thank you Mr. President. I appreciate Senator Sapareto coming forward with this amendment. I think that it is an improvement over the bill, unamended. It might not be as clear, strong as some of us might like it, but I am going to support this because I think that it is an improvement. Thank you.

SENATOR LARSEN: Senator Sapareto, what is the definition of "reasonable and unlawful function" under which you can enter a persons property? I mean, do we have a body of reasonable and lawful functions listed somewhere so people know what is reasonable?

SENATOR SAPARETO: Thank you for the question Senator. Actually, no we don't; however, I would defer to the original language of the current statute, which has "at a reasonable time". So "reasonable" is therefore mentioned already in the statute, and this simply goes along with it.

SENATOR LARSEN: Reasonable people can differ.

SENATOR SAPARETO: Yes they can. Thank you.

SENATOR FOSTER: Senator Sapareto, while I agree with Senator Below that this is an improvement over the original bill, do you have particular "reasonable and lawful functions" in addition to those that were in the amendment that was just failed, that you think are necessary to put into the law which leaves us with a sort of ambiguous standard and sets us up for potential confrontation between landlords and tenants?

SENATOR SAPARETO: Thank you Senator, for that question. No, I do not, but I will also draw your attention to the current proposal that was done by Senator Larsen also includes the question of reasonable. I am referring to her floor amendment, line 6, which refers to a "reasonable time". If a time can be reasonable perhaps also, a reason for entering may be reasonable as well.

SENATOR FOSTER: Thank you.

SENATOR SAPARETO: Thank you.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

### **RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time,

that all bills ordered to third reading be by this resolution read a third time and all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

### **LATE SESSION**

#### **Third Reading and Final Passage**

**SB 154**, relative to landlord access to rental properties.

**SB 166**, establishing a committee to study methods for the state to create incentives for school districts to provide mentoring for beginning teachers.

**SB 212**, requiring fiscal impact statements for interim administrative rules and prohibiting agencies from requiring by rule the submission of social security numbers.

**SB 215-FN**, relative to the use of prerecorded telephone messages for political advocacy.

### **ANNOUNCEMENTS**

**SENATOR EATON (In the Chair):** I just want to remind everybody to keep Senator Prescott and his family in your thoughts and prayers in the next few days.

**SENATOR LARSEN (RULE #44):** In addition to keeping Senator Prescott in our hearts and prayers, I would offer that in our hearts and prayers, the families of those who are in the conflict overseas and those who are over there fighting.

**SENATOR BELOW (RULE #44):** Thank you Mr. President. I would like to make a brief statement pursuant to Rule #44 before we break. Thank you. Today, I think, is a very somber day in our nation and the world's history. I believe that we are all in compliance in our support and our desire to honor the brave men and women of our enforcements whose lives are on the line today. I am sorry that I had to walk out on SR 3. I left while the majority was caucusing under the impression that I could prepare and offer an amendment to SR 3 that would correct what I believe was a factual error in the Resolution. The Resolution refers to the United Nations Resolution "as finding Iraq in material breach of its obligation". The point of fact is that the Resolution made no such finding. I simply wanted to offer to substitute the words recognizing that resolution as "deploring the fact that Iraq has failed to comply with certain commitments and obligations" as in fact the Resolution did. I walked out on the vote because I did not want to diminish what should be a strong nonpartisan statement of support for our troops; however, in good conscience, I did not feel that I could vote for something that I believed to be untrue. An element that was untrue. Personal integrity is a very important value to me. It was taught to me in particular by my father who served in the United States Navy for 30 years in World War II, in Korea, and for a full year with the Marines at the height of conflict in Vietnam. He died, shortly after I was elected to office, in a V. A. Nursing Home as a result of a disability suffered in Vietnam. Today, I simply wanted to honor his memory and the memories of all servicemen who put their lives on the line for this nation. Thank you Mr. President.

### RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, receiving House Messages, and receiving Enrolled Bill Reports and Amendments, and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

**In recess to the Call of the Chair.**

**Out of Recess.**

### REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

**HB 517**, relative to the classification of certain roads in the town of Hillsborough and transferring ownership of any residual interest in a certain parcel of property from the state to the city of Keene.

Senator D'Allesandro moved adoption.

**Adopted.**

### LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*March 27, 2003*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good Morning! I noticed that some are tardy. Over the past week there is a new word that has crept into my English language. At least it is new to me. The word is "embed". As you know, the painful and tragic events that are now playing themselves out in Iraq, are in large measure, being communicated to us by reporters, cameramen and journalists who have been embedded into various divisions, battalions and units of the armed forces. They have become embeds for us, risking safety and comfort so that you and I can know – sometime things we'd rather not know. To be embedded in this way is a privilege, a responsibility and a risk. You are given unique access to important experiences and facts; you are duty bound to decide how best to relay the information to those who are affected and you could be damaged, you yourself could get hurt, in the process. An embed has a privilege, takes on a responsibility and accepts a risk. And so let me be the first to apply this new word "embed" to you. You have been placed here by us, planted and embedded right into the very heart of our state government's leadership. No one else is allowed in when you caucus (privilege); no one else is really able to see the wider, broader, deeper picture of our needs and our wants in the way you ought to be able to (responsibility), no one else can be held accountable for any bad decisions you might make except for you (risk). You are brave people – for when you succeed millions will benefit, and if you fail, millions will pay the price for that. So be careful and know that we are grateful.

*Gracious God, we pray today especially for all who are in danger, for those who tell us their stories and for the leaders who must make the decisions. May Your wisdom, Your protection, Your purposes and Your love be deeply embedded in all our actions, all our words and all our lives.*

*Amen.*

Senator Peterson led the Pledge of Allegiance.

Senator Prescott is excused for the day.

## INTRODUCTION OF GUESTS

### MOTION OF RECONSIDERATION

Senator Clegg, having voted with the prevailing side, moved reconsideration on **SB 222-FN-A**, relative to motor vehicle fees, whereby it was referred to committee.

**Adopted.**

**SB 222-FN-A**, relative to motor vehicle fees.

**Senator Clegg moved ought to pass.**

SENATOR CLEGG: I believe that last time that we were here, Mr. President, there was some discussion on whether or not that we should have onboard diagnostics or emissions testing. I wanted to point out that in 1998, we passed such a law. Today, when it comes to inspections, there are forty pages of rules and there was some concern that if we didn't pass it, what would happen? I believe that there was a letter from Mr. Varney, from the Department of Environmental Services from the federal government, that states that we would be in risk of losing of substantial amounts of money. I also believe that we all think that clean air is a good thing and that onboard diagnostics is much better than tailpipe emissions. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

## COMMITTEE REPORTS

**SB 122**, relative to the regulation of first mortgage brokers. Banks Committee. Ought to pass with amendment, Vote 5-0. Senator Foster for the committee.

**Banks**

**March 19, 2003**

**2003-0855s**

**06/01**

### Amendment to SB 122

Amend RSA 397-A:3, II as inserted by section 1 of the bill by replacing it with the following:

***II. At any location for which a license is sought, a mortgage broker shall have a person with supervisory authority over the brokerage activities who has at least 3 years experience within the last 5 years in the mortgage lending or mortgage brokerage business; provided, such experience requirements shall not apply to any person whose license was renewed before the effective date of this paragraph.***

2003-0855s

## AMENDED ANALYSIS

This bill requires anyone applying for a new license as a first mortgage broker to have a supervisor with at least 3 years recent experience at any location for which a license is sought.

SENATOR FOSTER: Thank you Mr. President. I move SB 122 ought to pass with amendment. While weak mortgage broker laws have not been a large problem in this state, weak laws have been detrimental in other states. One of the most injurious problems we currently have is that people in the mortgage broker industry do not have a comprehensive understanding of the business and misinform their clients. This legislation will require at least three years of experience in the mortgage lending and brokerage industry within the last five years in order to have a knowledgeable and experienced workforce. This legislation is part of an overall effort to improve banking standards in New Hampshire. The Banks Committee asks your support for ought to pass with amendment. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 178**, relative to guaranty funds. Banks Committee. Ought to pass, Vote 2-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you Mr. President. I move SB 178 ought to pass. Guaranty funds serve a purpose. When an insurance company goes bankrupt the guaranty fund assists remaining claims in being paid. This legislation exempts claims made by a person or entity whose net worth exceeds \$25 million dollars (so I guess that I would be exempt, huh?). This promotes wise investment decisions and prevents an abuse of guaranty funds. The Banks Committee asks your support for the motion of ought to pass. Thank you very much.

**Adopted.**

**Ordered to third reading.**

Senator Flanders Rule #42 on SB 178.

**SB 179-FN-A**, relative to positions in the banking department. Banks Committee. Ought to pass, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you Mr. President. I move SB 179-FN-A ought to pass. The New Hampshire Banking Department has been working towards a more efficient and streamlined banking industry. This is a part of that continued effort. There are often not enough resources to provide much-needed enforcement for current statutes. This legislation establishes several new positions in the banking department to better enforce existing statutes. The Banks Committee on a 5-0 vote, asks your support for the motion of ought to pass. Thank you.

SENATOR FLANDERS: Thank you Mr. President. I would like to give you a very brief history: Two years ago when I came to this body, it did not take me very long to realize that Bob Flanders was not going to solve all of the problems in the state of New Hampshire. At this time, I decided that maybe I could take on one subject and maybe make some head-

way. My project for this second term is mortgage loans. I know several instances where these mortgage companies are coming and setting up in motel rooms, calling people all over the state and saying "what is your rate" and then offering lower rates and signing mortgage loans in motel rooms. I came in and I was going to pass all kinds of legislation to stop this. Before I knew that I was going to be on the Banks Committee, I contacted the Attorney General's office of Consumers Affairs and I contacted the banking people. I was told that there are all kinds of laws on the books, but that there was no way to enforce them. The present personnel at the banking...are doing audits on banks, but they are not doing any audits on mortgage companies and they are not doing audits on pay day loans and these types of people. This is...what happens is when an audit is conducted, the people that it is being conducted on pay the bill. We need to get out there and we need to see what these people are doing, and that is the purpose of this bill and I need your support. Thank you very much.

**SENATOR LARSEN:** I would just like to voice what we started last session on overview on mortgage loan originators. We are seeing through this session, a progression of consumer important bills which will improve oversight of mortgage loan originators and first mortgage brokers. I think that we are doing some good improvements for the consumers of New Hampshire through these laws. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 180**, making certain changes in the banking laws. Banks Committee. Ought to pass, Vote 5-0. Senator Odell for the committee.

**SENATOR ODELL:** Thank you Mr. President. I move SB 180 ought to pass. This legislation aligns current practice within the New Hampshire Banking Department with statute. It contains a series of technical changes to help ensure efficient overall operation. For example, it expands the federal agencies with which it may conduct joint examinations and also accepts federal regulatory forms so it will no longer be necessary to create separate state forms. This also replaces several terms within statute with the most current, accurate, and recent terminology with the industry. The Banks Committee asks your support for the motion of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 181**, relative to investigations by and license revocation appeals to the board of trust company incorporation. Banks Committee. Ought to pass, Vote 5-0. Senator Barnes for the committee.

**SENATOR BARNES:** Thank you Mr. President. I move SB 181 ought to pass. This legislation makes two changes to statute: the first gives explicit subpoena power to the Board of Trust Company Incorporation. The Banking Commissioner, Attorney General and the State Treasurer make up that board. Both the Banking Commissioner and Attorney General already have subpoena power independently. This legislation gives that power to the board as a whole and allows the production of records and documents relative to its investigation. The second change to statute removes a second layer of appeal should a person or entity have their license (for doing business with second mortgage home loans) removed. They currently have two avenues of appeal: The Banking Commissioner

and the Board of Trust Company Incorporation. The latter has never been used and is unnecessary. The Banks Committee asks your support for the motion of ought to pass on a 5-0 vote. Thank you very much.

**Adopted.**

**Ordered to third reading.**

**SB 80**, relative to vocational education and the automotive technology curriculum. Education Committee. Ought to pass with amendment, Vote 5-0. Senator Johnson for the committee.

**Senate Education**

**March 20, 2003**

**2003-0916s**

**05/04**

### **Amendment to SB 80**

Amend the bill by replacing section 3 with the following:

3 New Subdivision; Automotive Technology Curriculum and Advisory Council. Amend RSA 188-E by inserting after section 17 the following new subdivision:

Automotive Technology Curriculum and Advisory Council  
188-E:18 Automotive Technology Curriculum; Funding.

I. The department of education shall develop and implement an automotive technology curriculum in the regional career and technology education centers to provide statewide opportunities for high school students interested in careers in the automotive industry to enroll in a high quality automotive technology curriculum.

II. The state board of education shall adopt rules, pursuant to RSA 541-A, relative to course content, curricular requirements, and general procedures for implementing the automotive technology curriculum. At a minimum, the curriculum shall include standards established by the National Automotive Technicians Education Foundation (NATEF).

III. In developing and implementing an automotive technology curriculum, the efforts of the department of education shall complement existing public and private actions, and shall include the pursuit of innovative public-private partnerships with businesses, nongovernmental organizations, the community-technical college system, and other appropriate groups. Such partnerships shall at a minimum consist of a 50/50 match of public and private funds, or like kind compensation.

(a) Funding shall not exceed \$5,000 per automotive technology program or \$90,000 in total non-lapsing appropriations in a fiscal year. Such funding shall be used exclusively to assist an automotive technology program in obtaining or maintaining NATEF certification and may include instructor professional development, including ASE certification, automotive laboratory equipment, hand tools, maintenance of equipment or tools, learning resources, multimedia periodicals, and any other items deemed necessary to assist an automotive technology program in obtaining or maintaining NATEF certification.

(b) Automotive technology programs that will meet certification requirements within 2 years shall be given priority for funding. All other programs not eligible to be certified within the first 2 years shall be eligible for any remaining funding.

IV. When appropriate, the department of education shall include in its biennial capital budget request funding for the planning, construction, and renovation of equipment necessary for the operation of automotive technology curriculum in the regional vocational education centers.



V. Regional career and technology education centers which implement the automotive technology curriculum shall be responsible for maintaining the program with funding requests made through the budgetary cycle

VI. Existing or new technical education centers that provide automotive technology education shall obtain program certification pursuant to paragraph II of this section prior to becoming eligible to receive state renovation and construction funds. All documentation relating to program certification shall be submitted to the automotive technology advisory council established in RSA 188-E:19 for approval prior to release of any such funding.

Amend RSA 188-E:20, I and II(a) as inserted by section 3 of the bill by replacing them with the following:

I. The members of the advisory council shall be as follows:

(a) One member of the house of representatives, appointed by the speaker of the house.

(b) One member of the senate, appointed by the president of the senate.

(c) The commissioner of the department of education, or designee.

(d) The commissioner of the regional community-technical college system, or designee.

(e) One automotive instructor teaching in the community-technical college system, appointed by the governor and council.

(f) One secondary education career technical education administrator, appointed by the governor and council.

(g) Four members of the New Hampshire Automobile Dealers Association, appointed by the governor and council.

II.(a) The term of office for each member appointed under subparagraphs I(e), I(f) and I(g) shall be 3 years, or until a successor is appointed and qualified in the case of a vacancy. The term of office for all other members shall be coterminous with the term of office for the position that qualifies that member to serve on the advisory council. A vacancy shall be filled in the same manner, but only for the unexpired term.

SENATOR JOHNSON: Thank you Mr. President. I move SB 80 ought to pass with amendment. I am proud to be a sponsor of this very important legislation. While automobiles are becoming more and more sophisticated and are largely becoming computer based, extensive technical training is required to meet the market needs. However, we have a critical shortage of qualified automotive technicians and only 18 percent of the existing automotive programs are exposed to the most recent automobile parts and tools. Enrollment in the automotive programs at the high schools and technical colleges are at their highest levels yet, but their training does not meet industry standards, nor does it reflect the advances that the auto industry has made. This legislation would require that automotive programs be certified or working towards certification by the National Automotive Technicians Education Foundation in order to receive funding from the state. Private partnerships will help ensure that state dollars are leveraged for this program. A certified program is desirable for employers as well as customers who need qualified persons working on their automobiles. The Education Committee asks your support for the motion of ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 107-FN-A-L**, establishing a statewide education accountability system. Education Committee. Ought to pass with amendment, Vote 3-2. Senator O'Hearn for the committee.

**Senate Education****March 20, 2003****2003-0915s****05/04****Amendment to SB 107-FN-A-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 Policy and Purpose. The general court finds that a statewide accountability system needs to be established to assure that public schools are providing all students an opportunity to receive an adequate public education as set forth in RSA 193-E:1-2. A comprehensive, statewide educational accountability system should include:

I. Statewide performance goals for all schools.

II. Systematic measurement of school performance at the state and local level using multiple valid measures.

III. Reporting on pupil performance at the school, school district, and state levels.

IV. The opportunity for schools that are not making satisfactory progress toward statutory performance goals to receive assistance from the state, including assistance with the development, implementation, and evaluation of local education improvement and assessment plans designed to meet state goals and any performance goals developed locally to meet identified educational needs.

V. A statewide system of recognition of achievement for schools that meet or exceed school performance and accountability goals and strategic responses for schools that do not meet these goals.

2 Adequate Public Education; Reporting on the Delivery of Education. RSA 193-E:3 is repealed and reenacted to read as follows:

193-E:3 Reporting on the Delivery of Education.

I. By August 1, 2003, and annually thereafter, each school district shall report data to the department of education, at the school and district levels for the previous school year, on the following indicators, provided that the department shall develop a reasonable schedule to phase-in the reporting of data that is not being collected systematically during school year 2002-2003:

(a) Numbers and percentages of pupils with disabilities, limited English proficient pupils, pupils in advanced placement programs, and economically disadvantaged pupils.

(b) Pupil mobility rates calculated as the percentages of pupils who transfer into or out of a school each year. These percentages shall not include pupils who enter the school on opening day at the lowest grade in the school or pupils who leave the school upon completion of the highest grade in the school.

(c) Attendance and dropout rates.

(d) Performance on statewide tests administered pursuant to RSA 193-C:3, IV(i) including the percentage of pupils reading at grade level on the reading component of the grade 3 statewide educational assessment and performance on any other standardized tests administered at local option.

(e) Percentage of graduating pupils going on to post-secondary education and military service.

(f) Number and percentage of all courses being taught outside of the educator's certification area.

(g) Teacher and administrator turnover rates at the school and district levels.

II. By August 1, 2003, and annually thereafter, each school district shall report to the department of education data at the school and district levels for the previous school year.

III. The department of education, with the approval of the legislative oversight committee established in RSA 193-C:7, may implement and report data on any additional indicators deemed relevant to the purposes of this section.

IV. In order to reduce school districts' administrative time and costs, the department of education shall develop and utilize user-friendly, computer forms and programs to collect the data set forth in paragraph I and all enrollment and cost data related to determining the cost of an adequate education. The department shall request funds as part of its biennial operating budget to develop, update, and maintain the required forms and programs.

V. Not later than December 1, 2003, and annually thereafter, the department of education shall issue a public report on the condition of education statewide and on a district-by-district and school-by-school basis. This report shall be entitled "New Hampshire School District Profiles." It shall include demographic and pupil performance data reported in paragraph I and other relevant statistics as determined by the department of education. Comparisons with state averages shall be provided for all data reported. Comparisons of each district and school to itself based on its own performance for the prior school year and its most recent 3-year rolling averages shall be provided. Statewide rankings of each district and school shall be provided, including a statewide ranking of each school and school district based on the percentage increase of improvement as compared with the same school district's performance in the previous year. The report shall be organized and presented in a manner that is easily understood by the public and that assists each school district with the identification of trends, strengths, and weaknesses and the development of its local school education improvement and assessment plan.

3 New Chapter; School Performance and Accountability. Amend RSA by inserting after chapter 193-F the following new chapter:

## CHAPTER 193-G

### SCHOOL PERFORMANCE AND ACCOUNTABILITY

193-G:1 Definitions. In this chapter:

I. "Commissioner" means the commissioner of the department of education.

II. "Department" means the department of education.

III. "NHEIAP" means the New Hampshire education improvement and assessment program as established under RSA 193-C.

193-G:2 Statewide Performance Goals.

I. All pupils shall perform at grade level on the reading component of the statewide assessment administered in grade 3. The department shall provide an assessment of each third grade pupil's reading ability. Such assessment shall take into account the need to evaluate students with disabilities, students whose native language is other than English, minority students, students of low income households.

II. Schools shall make adequate yearly progress on the statewide tests administered annually.

III. Schools shall meet statewide targets relative to retention rate.

IV. Schools shall meet statewide targets relative to the percentage of pupils who graduate with a regular diploma from an approved high school.

193-G:3 Local School Improvement.

I. The commissioner shall annually compile and disseminate to the governor and council, the president of the senate, the speaker of the house, local school boards, superintendents of schools, the public, and shall make available on the department website, a list of schools that are not meeting the statewide performance goals set forth in this section.

II. The department shall provide technical assistance to the school districts upon request of the district.

193-G:4 State Assistance to Local School Districts; Education Improvement Fund Established.

I. There is hereby established a local education improvement fund in the state treasury for the purpose of providing assistance to local school districts. This fund shall be non-lapsing.

II.(a) The department of education is authorized to use the amount transferred to the education improvement fund, in addition to any available federal funds for similar purposes, for any of the following purposes:

(1) To support and administer the local education improvement plan program.

(2) To collect, analyze, and report the demographic and educational improvement data.

(3) To administer the grade 3 reading component of the assessment program.

(4) To assist local school staff with the analysis and use of school performance data.

(5) To provide grants as available to school districts for local school improvement.

(6) To provide a system of annual recognition to identify best practices and promote school improvement.

(b) For the biennium beginning July 1, 2003, and every biennium thereafter, appropriations from the fund shall be authorized by the legislative fiscal committee and the governor and council.

(c) Moneys transferred to the education improvement fund shall not be transferred, diverted, or used for any purpose not specified in this section.

III. The priority for the use of any state funds shall be given to lower-performing non Title I schools.

193-G:5 Powers of the Department of Education. Nothing in this chapter shall be construed to permit either the department of education to take control of the daily operations of any local public school.

4 Statewide Education Improvement and Assessment Program; Local Education Improvement and Assessment Plans and Strategic Responses. RSA 193-C:9, I is repealed and reenacted to read as follows:

I.(a) As a strategic response to meeting statewide performance goals, each school district appearing on the list required under RSA 193-G:3, I, shall develop and implement a local education improvement and assessment plan. The plan shall be reviewed annually and shall be included in the school district's annual report. The development and implementation of the plan and review shall be carried out with input from administrators, teachers, parents, employers, and other community members. The plan shall be approved by the local school board by December 31 of the year in which a school is designated as not meeting adequate yearly progress. At a minimum, each plan shall identify and set forth objectives for the school or each school in the district to achieve, including:

(1) Objectives for improved pupil performance in each of the state-wide performance goals.

(2) Local assessment measures which focus on individual student performance.

(3) The use of local and statewide assessment results to improve instruction and enhance student learning.

(4) Methods for reporting the results of all assessment measures.

(5) Strategies to promote family and community involvement.

(6) Procedures detailing how the school district budget reflects the goals of the plan.

(b) In addition to the provisions of subparagraph I(a), each plan may include the following elements:

(1) Curriculum and proficiency standards.

(2) School and district performance goals based on reported data on educational indicators listed in paragraph II of this section.

(3) Procedures for aligning curriculum and instructional practices.

(4) Role of support services and programs.

(5) Role of instructional leadership.

(6) Staff supervision and evaluation and performance-based professional development.

(7) Pupil behavior and conduct codes.

(8) Provisions for addressing individual school needs.

5 New Subparagraphs; Statewide Education Improvement and Assessment Program; Program Goals Amended. Amend RSA 193-C:3, IV by inserting after subparagraph (h) the following new subparagraphs:

(i) At the end of grade 3, to determine if pupils are reading at grade level on a standardized reading test to be developed by the department as part of a statewide assessment system.

(j) At the school, district, and state levels, to provide performance reports on specific subgroups of pupils as required by federal law.

6 New Subparagraph; State Board of Education; Rulemaking. Amend RSA 21-N:9, II by inserting after subparagraph (bb) the following new subparagraph:

(cc) School accountability and performance standards and strategic responses, as required by applicable federal law and in accordance with RSA 193-G.

7 Statewide Education Improvement and Assessment; Duties of the Legislative Oversight Committee. RSA 193-C:8 is repealed and reenacted to read as follows:

193-C:8 Duties of the Legislative Oversight Committee. The committee shall:

I. Review the development and implementation of the program to ensure that they are in accordance with legislative policy. Implementation of the program shall be in conjunction with the committee's review.

II. Review the provisions of RSA 193-G and submit a report of such review every 2 years after the effective date of this section to the speaker of the house of representatives, the president of the senate, the governor, and the chairpersons of the house and senate education committees.

III. Prepare legislation that is needed as a result of the review of the progress and results of the policies implemented under this chapter.

IV. Confer with the commissioner and the state board of education to identify operational principles, which should guide the work of the department of education in supporting improved school performance and accountability.

V. Analyze existing department of education programs and initiatives which support improved school performance and accountability.

VI. Receive reports from the commissioner regarding the status of public education in New Hampshire, updates on the improvement made by local school districts toward achieving satisfactory progress in state-wide student performance under RSA 193-G:2 and status reports on the on-going issues and implications of school accountability at the state and federal level. Reports by the commissioner shall occur at least once annually and more frequently as needed, as determined by the committee and the commissioner.

8 Repeal. The following are repealed:

I. RSA 194:23-d, relative to state financial aid.

II. Section 9 of this act, relative to the department of education investigation of gains-based testing.

9 Department of Education; Gains-Based Testing. The commissioner of the department of education shall investigate the feasibility of gains-based testing in meeting the needs of a statewide testing program. The commissioner shall report all findings and recommendations to the house and senate education committees no later than November 1 of each year.

10 Effective Date.

I. Paragraph II of section 8 of this act shall take effect June 30, 2005.

II. The remainder of this act shall take effect July 1, 2003.

**2003-0915s**

#### AMENDED ANALYSIS

This bill establishes a statewide education accountability system which includes school performance standards, the creation of an education improvement fund, and the development of a local school improvement plan in each school district.

SENATOR O'HEARN: Thank you Mr. President. I move SB 107 ought to pass with amendment. School accountability is an issue that has been around for several years and should no longer be ignored. This legislation will ensure that our schools are doing their part in educating our children and will allow us to praise those schools that are deserving and target resources to schools that need improvement. This approach addresses the courts' expectations as ruled in the Claremont court cases as well as school improvement, as well as No Child Left Behind. This legislation also includes statewide performance goals, a systematic measurement of school performance at state and local levels using multiple valid measures and reporting on pupil performance. It also attempts to align data reporting requirements of the federal and state regulations. School accountability is long overdue in New Hampshire and I believe it's time we move this legislation forward. The Education Committee asks your support for the motion of ought to pass with amendment. Thank you.

SENATOR BELOW: Senator O'Hearn, the amendment, I guess, is in our calendar on page 37. There is a section of the amendment proposed, RSA 193-G:2 entitled Statewide Performance Goals. It has a series of statements. I would call your attention to II, III and IV that says, "Schools shall make adequate yearly progress", "Schools shall meet statewide targets", "Schools shall meet statewide targets relative to a couple of matters". That sounds to me, like it's a mandate that is being put into statute. It is a requirement. My question is, are we providing funding for schools to fully meet this mandate or are we creating an unfunded mandate in state statute?

SENATOR O'HEARN: These are requirements from No Child Left Behind and these are what we are putting in with a definition to follow, of what adequate yearly progress will be when we are able to work with the state Board of Education as to what adequate yearly progress is.

SENATOR BELOW: In fact, the standards that schools will have to meet are not being defined by us but we are having the appointed state school board establish these standards that schools will have to comply with. Is that correct?

SENATOR O'HEARN: That is correct, though this is a piece of legislation that is moving over to the House. There is more work to be done there. It is a very uncomfortable situation to have a lot of our No Child Left Behind regulations followed up in rules by the state Board of Education. I would rather have the legislature do that. There is an Oversight Committee that will be keeping an eye on this as this goes forward, but this is still a work in progress as we move this forward over to the House.

SENATOR BELOW: Thank you.

SENATOR LARSEN: Thank you Mr. President. You will see that this was not a unanimous Education Committee vote. While I recognize the pressure that our hardworking Senate Education chair feels to pass something relating to No Child Left Behind, there is real concern for the effect that the cost that this will have upon our school communities throughout the state. I am happy that this is going to go to Finance because clearly there is a huge Financial implication to this. I am also concerned that we are rushing into passage of implementing in our own New Hampshire laws, what are federal mandates, that we believe may very well be unfunded mandates. By putting in the amendment that you see, we have included language that incorporates some of the standards of the No Child Left Behind and language that talks about adequate yearly progress. Language that talks about meeting certain goals. None of us have a problem with having schools be accountable and working to improve the schools of New Hampshire, but the language of this amendment is very worrisome in that there is a concern in fact, that we are rushing to an unfunded mandate. We are also, perhaps, establishing a new standard of adequacy that can then be used to challenge whether local school districts are in fact performing and providing adequate education. There is concern, and I had a long conversation with people through the School Board Association, School Administrative Association, that in fact, under the standards that we are setting up, 85 to 90 percent of our New Hampshire schools will not be able to make adequate yearly progress. Are we setting them up if they fail for the state... is the state not then responsible to make them succeed through adequate funding? Certainly we all want to see that adequate funding occur, but there are significant costs to No Child Left Behind that all of us need to consider and I know that our able Finance Committee will look at this as well. In SB 164, which was the school accountability bill that we passed last session, we included \$2.5 million to implement the gains based testing that we thought perhaps would be a measure of adequate education. Where is the funding in this for the new language that says that every child shall be tested to see if they are performing at grade level reading in the third grade? Where is the money in this bill that needs to be there to implement that added layer of testing that is even on top of what the federal government is requiring of testing for every child? The School Board Association identified and wrote in their explanation, "as for No Child Left Behind, when the act was passed, it contained an authorization for a \$5 billion increase in fiscal year 2003 and a \$2.5 billion in-

crease in fiscal year 2004. That is at the federal level. The amount was appropriate in the budget, however, is \$1.8 billion or just 36 percent of what was deemed necessary when the No Child Left Behind Act was passed. Title one was authorized for \$16 billion, but we now only receive \$11.7 billion. We get a lot of promises from the federal government. Does the money follow? Certainly all of us are aware of the IDEA special education funds and how inadequately those are funded in New Hampshire. Are we getting into an unfunded mandate? Further, the No Child Left Behind Act imposes new costs on local districts and thus, resident taxpayers pick up the costs. Increasing costs are necessarily shifted to the local school tax and decisions on local priorities and choices in local school budgets become ever more difficult. None of us here in the Senate, and certainly no school board would ever stand up and say that they want a child left behind. We are in fact, setting ourselves up, I am afraid, for leaving school districts behind because we are presenting to them what is an underfunded mandate, if not an unfunded mandate. I bring this to the attention of the full Senate, and I know that the Finance Committee will consider this, but there is a real danger in putting any language that actually states that federal No Child Left Behind laws into our New Hampshire statutes because we are in fact acknowledging that that is the law that we are going to operate under and we are still in a debate as to whether that is the wisest move for our state. I wanted to bring those to the attention of the Finance Committee and I know that we will have further discussion on this. Thank you.

**SENATOR FOSTER:** Senator Larsen, Senator Below asked before about the provisions of the law that gives the unelected state school board the right to pass rules to define and add sort of definitions to this, and as I understand one of those things that they would have the power to do is to define what adequate yearly progress means? What schools shall meet statewide targets relative to retention rates and so forth. If those definitions were set at a very high bar, can you explain what the ramifications might be under the No Child Left Behind bill in some of these districts, do you know what could occur?

**SENATOR LARSEN:** Well as I said, the real concern is that we are setting our schools up to be identified as failing schools, with very little oversight in handing that oversight off to the state school board, we do in fact, set ourselves up for a high number of failing schools. I don't believe, I don't think that you do, that the majority of our schools are failing, but for a school district that is already for example, a high performing school district, to show adequate yearly progress, what if they already have a very high level of performance and how do they show that adequate yearly progress? There is a real concern with handing it off to a state board of education, that as we know, is a politically appointed group that have very real concerns about maintaining quality of education in New Hampshire, but that is, to a large extent, our job in the legislature. There are real concerns with handing that off as well.

**SENATOR FOSTER:** If the school is a failing school, am I right that some serious ramifications occur under the federal law?

**SENATOR LARSEN:** Yes. You have...if a school is a failing school, within three years, the parents then have the opportunity to require that their children be allowed to be tuitioned out, how does that work in a community, say, Colebrook, when the nearest alternative school for them to tuition into requires major transportation issues that all of those issues need to be worked through? There is a concern that we are in fact



identifying schools as failing, but we are not doing enough to help them improve through the kind of things that we ought to be doing in here, with school improvement issues.

SENATOR FOSTER: Thank you.

SENATOR LARSEN: Thanks.

SENATOR COHEN: Thank you Mr. President. There is no question that we all recognize that educating our children has got to be the highest priority. There is no question that we all agree that our schools have to be accountable. Obviously, the devil is in the details. There are a lot of details in this piece of legislation. I think that it is entirely appropriate that it is going to the Finance Committee. Questions remain such as how are the standards formulated? Are they realistically measured in terms of providing a quality education for all children of New Hampshire. How can improvements be implemented? The most important question, I think, about this is...and the question has yet to be answered, is this fiscally responsible? So I look forward to the Senate Finance Committee looking into that question, is this fiscally responsible, and we will continue this discussion after that, should the bill pass? Thank you.

SENATOR O'HEARN: Thank you Mr. President. I think that we need some clarifying points here on No Child Left Behind, this is not to identify schools as failing and you need to attend meetings that are offered by the Department of Education that are offered by different groups within the state on this program. This is about meeting adequate yearly progress. That means that if they are not progressing and reaching a certain bar, they will not be meeting adequate, yearly progress. This is not calling a school a failure. I think that is what you need to understand. Remember that this, in Washington, came from bipartisan support. In the federal legislation itself, it exempts states from following this law if it does not cover the costs. We need to start moving forward on this. All that we are asking our schools to do is to reach a level of proficiency so that all students are at basic education. If we are setting the bar too high by calling it basic, then we are in trouble and we are looking at this in the wrong way. If we don't pass some type of accountability we are not only meeting the Claremont decision, but we are then jeopardizing all of our schools that are title I schools from losing those federal dollars, which will put an even bigger hole in our budget because our schools desperately need them. As for gains based testing, we are not sure gains based testing is what will be federally allowed. There is a good change of it, but there is language in this amendment, in this law, to allow the commissioner to take a look at gains based testing. I think that setting the bar of having our children reaching basic on the test that we have now is not a bar that is very high as those opponents speak. I think that understanding what this law is and recognizing it is over 1,000 pages, there is yet a lot to learn, a lot to do. I recommend that you work closely with the state board if this is where your concern is, but I think that the right thing to do is to move forward. As for SB 164 with \$2.5 million, I remind this body that it was vetoed by our past governor. That \$485,000 was still put into this from legislation from last year that we still need to fund. Thank you Mr. President.

SENATOR LARSEN: Senator O'Hearn, I think that you will recall that the reason that SB 164 was vetoed was because it had language relating to teacher nonrenewal and it wasn't the issue of accountability. My real question comes to the new testing requirements on page 38. I hope

that Finance will look at it, but maybe you can advise me. The new language that is not part of No Child Left Behind that I am aware of, but that it sets up a new...at the end of grade three, yet another test to determine if people are reading at grade level on a standardized reading test? You heard in committee with me, that we have language testing at grade three, but not reading. While I would like to see every child reading at grade level throughout the years...how is the department going to pay for this additional test?

SENATOR O'HEARN: Money for this test will be available through No Child Left Behind. If you remember through the Adequacy Commission, this came up many times, and as we worked through this, it is either pulling a reading test off the shelf or it is adding about four or five questions to the third grade test that we have now. The cost, as I understand it, could be minimal, but the money will come from No Child Left Behind.

SENATOR LARSEN: Do you believe that the third grade testing for reading is a requirement of No Child Left Behind or is that a new requirement that we are adding into this law?

SENATOR O'HEARN: I think this is a requirement that we are adding in.

SENATOR LARSEN: Thanks.

SENATOR ESTABROOK: Thank you Mr. President. Thank you Senator O'Hearn. As I am reading the amended version that is in our calendar, my understanding is that if a school is not meeting the performance goals, it will be on a list put out by the Department of Education and then if it is on that list, their requirement is for the school or district to create an improvement plan. That is the end point in school accountability. Since this is a bill intended to hold our local schools accountable for the provision of an adequate education, what happens beyond the requirement to prepare an improvement plan in terms of holding them accountable?

SENATOR O'HEARN: I am not sure that I am fully understanding your question.

SENATOR ESTABROOK: Thank you Mr. President. More simply, if a school is determined to be in need of improvement, the requirement in this bill, the way that it is held accountable for that failure, is to be required to prepare an improvement plan. My question is, if that fails to improve the school, what further action can be taken to be sure that the school is accountable for providing that adequate education?

SENATOR O'HEARN: There is a difference between the non title I and the title I schools. Nontitle I schools will be offering school choice after so many years. As for the title I schools, there is money provided in the bill to help school districts improve in the areas that they are looking to improve, whether it would be in teacher improvements or programs, but there will be money available for the school districts to ask for it to help them through those projects.

SENATOR ESTABROOK: So in other words, the schools that receive federal title I funding will be come under the provisions of the No Child Left Behind Act in terms of the consequences of failure and that the schools who do not, will only be accountable to the extent that this measure holds them accountable, and the extent that that happens here is simply by creating an improvement plan?

SENATOR O'HEARN: In the improvement plan, there are a lot of requirements that are set forth in this bill. As I said, this bill is a progress. It is being progressive. We are working with the House Education Committee to bring this forward. I know we are working under a time constraint, but I believe the Legislative Oversight Committee needs to continue its work as in our past debates on accountability, if you remember? We talked about we don't know why a school district is not doing well. Before we have anyone step in, especially the Department of Education, we should know what the problems are, whether it is something that can be fixed by something we legislate or whether it is something that can be fixed by putting more money into it, or whether it is something within the district that the district needs to take a look at itself.

SENATOR ESTABROOK: Thank you.

SENATOR D'ALLESANDRO: Thank you Mr. President. First, I don't think that there is anybody who is not in favor of accountability. Having been a school board member in my career, let me tell you the most difficult thing is dealing with special education students. The federal government did promise up to 40 percent. That has never been satisfied, and yet we take care of all of those students in our school system. So there is a promise that was made years ago and in every campaign, every campaign, everyone says, "we are going to restore the monies, we are going to give you up to 40 percent". It has never happened. All of a sudden we have a new bill, 1,000 pages long, and this bill says that we are going to give you all kinds of money, and you are going to have to do this, this and this, and the money is going to be there. This legislation incorporates that federal legislation. Well you know as Jerry McQuire said, "show me the money". It has not arrived. **TAPE CHANGE** and it is my impression that it will not arrive. That has been the case with special education. In Manchester we have 17,500 students in the system and "IEP's" are addressed. We fund them at the local level. That money is appropriate year after year after year. We battle with the aldermen. Senator Gatsas will attest to that. We battle for monies to take care of these children when the monies have not come from the federal government. Do we want accountability? Absolutely. Everyone wants accountability. Is that accountability going to carry with it a price tag? Absolutely. Is No Child Left Behind going to come with the money? I don't know, but based on the history, and based on the record, it hasn't. This bill is going to go to Finance. It will be addressed by the Finance Committee. As I say, everybody wants accountability. It is how we get there that is the problem. That is the decision, when the money comes into play. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 124**, establishing a family-community involvement program. Education Committee. Inexpedient to legislate, Vote 3-2. Senator Green for the committee.

SENATOR GREEN: Thank you Mr. President. I move that SB 124 be inexpedient to legislate. While the principles of a family community involvement program are fundamental to the success of a child, this

legislation is not the proper vehicle to implement such a policy. This legislation has a fairly high fiscal impact of \$285,000. A community involvement program can be implemented without using the Department of Education and yet also have a very small fiscal impact. I strongly support the concepts of family community involvement in the educational life of a child, however, this legislation is not the proper way to address such an important policy. The Education Committee asks your support for the motion of inexpedient to legislate. Thank you very much.

SENATOR ESTABROOK: Thank you Mr. President. Senate Bill 124 is another example of excellent public policy fallen victim to our failure to create a stable revenue structure. It would have enabled the Department of Education to assist local school districts choosing to implement national PTA standards for family and community involvement. The committee recognized the value of these standards and of the proposed implementation methodology. In fact, the Education Committee's accountability bill requires local school districts to improve family community involvement as part of school improvement efforts. This bill would have helped them to do so. My understanding is that the bill is not moving forward to Finance because of the cost projected by the Department of Education. The cost that they cite is far beyond the amount needed to provide the assistance and support to districts. At the time much of the language of this bill was framed, it was agreed that the cost was something around \$50,000. The accuracy of the cost estimates is a debate which should have occurred in Finance. So I rise to oppose the committee's inexpedient to legislate in recognition of the importance of the bill's policy.

SENATOR O'HEARN: Thank you Mr. President. I just would like to reiterate Senator Green's speech on this, that we recognize the need for parent involvement in our schools, but institution of PTA standards into our schools is not the only way to do this. And to do that at a cost and billing the Department of Education to do this, and bring in family involvement is not necessarily the right way. It can be done locally and at this time where our budget is so tight, I recommend that this bill be inexpedient to legislate. Thank you.

SENATOR LARSEN: Senator Estabrook, I suspect that you saw as I did, in the most recently passed school accountability process that that amendment had language that required local districts to implement a plan for, on page 38, family and community involvement, strategies to promote family and community involvement. So we are seeing that local districts are being asked to do that. Didn't your bill in fact...wouldn't it have created a mechanism for promoting the best practices so that school districts would know how to respond if they have to, to these school improvement requirements that we are passing down on them?

SENATOR ESTABROOK: Yes, thank you Senator Larsen. Yes, in fact, these national PTA standards for family and community involvement are actually being recommended by the New Hampshire's School Board Association as model policy to our districts. They have been implemented in a variety of ways across the country. The bill would have called for the department to assist local districts to create school based councils that would help to implement these standards because simply adopting them and letting them sit, obviously, creates no change whatsoever. Often local school communities need some outside assistance in organizing themselves to affect school change.

SENATOR LARSEN: Thanks.

**Committee report of inexpedient to legislate is adopted.**

**SB 132-FN-A**, extending the Parents as Teachers program in Sullivan county and making an appropriation therefor. Education Committee. Ought to pass with amendment, Vote 5-0

Senator O'Hearn for the committee.

**Senate Education**

**March 20, 2003**

**2003-0918s**

**05/04**

**Amendment to SB 132-FN-A**

Amend the bill by replacing all after section 1 with the following:

2 Parents As Teachers Program; Reference to Department of Health and Human Services Replaced with Department of Education. Amend the introductory paragraph of RSA 193:35, I to read as follows:

I. The department of ~~[health and human services]~~ **education** shall establish the school district based Parents as Teachers Program for a rural community in Sullivan county in cooperation with School Administrative Unit 6 and the Parent Information Center. Sullivan county will be the rural site for the program because of its unique demographic profile, including the high number of risk factors affecting its children, the demonstrated interest of its public officials in the program, and the capacity to link the program to existing programs within the county including Good Beginnings, the Parent Information Center, and department of ~~[health and human services]~~ **education** programs in Sullivan county. The department shall use the following criteria to measure the effectiveness of the program:

3 Parents As Teachers Program; Rulemaking; Reference to Department of Health and Human Services Replaced with Department of Education. Amend RSA 193:36 to read as follows:

193:36 Rulemaking. The commissioner of ~~[health and human services]~~ **the department of education** shall adopt rules, pursuant to RSA 541-A, necessary to carry out the provisions of this subdivision.

4 Parents as Teachers; Report and Recommendation; Information from Department of Education. Amend RSA 193:37 to read as follows:

193:37 Report and Recommendation. On or before October 1, 2004, the department of health and human services shall prepare and submit to the speaker of the house of representatives, the president of the senate, and the chairpersons of the house and senate education committees an evaluation and report of the school district based Parents as Teachers Programs established pursuant to this subdivision, and recommendations for the expansion of the program statewide. The evaluation and report shall incorporate the criteria set forth in RSA 193:35, I and shall include an assessment of the program's effectiveness based on those criteria. ***The department of education shall provide the department of health and human services with information on the Parents as Teachers Program from the date of transfer of the program through September 30, 2004, for the purposes of preparing the report.***

5 Effective Date. This act shall take effect July 1, 2003.

**2003-0918s****AMENDED ANALYSIS**

This bill extends the Parents as Teachers Program through the fiscal year ending June 30, 2005 and makes an appropriation for the program.

The bill also transfers responsibility for the Parents as Teachers Program from the department of health and human services to the department of education.

SENATOR O'HEARN: Thank you Mr. President. I move SB 132 ought to pass with amendment? This program is a pilot program in Sullivan County, which was introduced through statute in May of 2000. The funds for Parents as Teachers program will soon lapse. The legislation will then continue this pilot program. The Parents as Teachers Program helps parents understand child development and the need for parents to act as teachers to help that development, especially in the Sullivan County area. It does so by teaching parents what is an appropriate way to communicate and interact with their child. This is a program, which benefits both the parent as well as the child. The Education Committee asks for your support for the motion of ought to pass with amendment. Thank you.

SENATOR BOYCE: Senator O'Hearn, where did the funding for this program come from in the beginning?

SENATOR O'HEARN: It was a match with Medicaid Funds and we have lost the Medicaid Funds.

SENATOR BOYCE: How many schools are involved in this?

SENATOR O'HEARN: This was in Sullivan County and the major impact was in the Claremont school district.

SENATOR BOYCE: So it is basically one small group of schools?

SENATOR O'HEARN: Yes.

SENATOR BOYCE: Thank you. I rise to speak. I would like to speak against this bill. My reason for that is that this was started as a program that had federal money in it and now will no longer have federal money in it. It serves a very small group of schools. It is not a very large amount of money, but it is my feeling that if the schools that are doing this, are seeing the benefit, then they should have within their budget, discretionary funds which would allow them to implement this program on their own and pay for it, and that the state does not need to be paying for this out of state funds, especially when it was originated with federal funds. I would therefore ask that we vote against the committee recommendation. Thank you.

SENATOR ODELL: Thank you Mr. President. The state of New Hampshire, through the commissioner of Health and Human Services essentially made a commitment to these Claremont Schools. The legislation originally, offered an opportunity for an urban school and a rural school to put into place a parents and teachers program. Claremont stepped forward and put that program into place. It has been in place now for two years. If we do not fund it, what you will be basically doing is breaking the commitment of the state of New Hampshire to the Claremont Schools and secondly, you will be stopping a program that is already in place and we will lose the benefit of the investment that has already been placed into the program. This is a pilot program. There are those that believe that it should be expanded to all of the schools in the state of New Hampshire. I think that this would be a terribly missed opportunity if we did not continue a program that is at a pilot status right

now and see the benefits of this program in New Hampshire and possibly that it can be expanded to be used as a vital program for other schools in the state. I would encourage that we support the committee's recommendation.

SENATOR SAPARETO: Thank you Mr. President. Mr. President, am I correct in understanding that the policy decision made by the committee of ought to pass and that this bill will be sent to Finance?

SENATOR EATON (In the Chair): This bill will be sent to Finance.

SENATOR SAPARETO: Thank you.

SENATOR ESTABROOK: Thank you Mr. President. I just wanted to rise as a co-sponsor to thank the Education Committee for their unanimous vote in favor of moving this bill forward. This is one of the few commitments that our state makes to the development of young children. As Senator Odell was pointing out, it is a pilot. Being a pilot with young children and the idea of being that we are going to be affecting their school success, we need more than two years to make that happen. It is really critical, if we are going to get any benefit out of our current investment, that we continue to do so.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 63-FN-A-L**, relative to establishing community reinvestment areas and granting business tax credits for investments in community reinvestment area projects. Energy and Economic Development Committee. Ought to pass, Vote 5-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you Mr. President. I would like to defer to Senator Odell, Chairman of the committee.

SENATOR ODELL: Thank you Mr. President. I move SB 63 ought to pass as recommended by the Energy and Economic Development Committee by a unanimous vote of 5 to 0. Today, the committee asks you to vote for SB 63 to support a policy that will allow towns and cities to create community redevelopment areas. New businesses moving into these areas would be eligible for credits against future business taxes. This legislation is no panacea for economic development in our communities. But, it is a new tool to help towns and cities market specific areas in their communities to new businesses. This legislation will be of tremendous benefit to communities such as Claremont and Berlin. Senator Gallus and I took the concept of SB 63 to our own districts and held public meetings on it. It has the strong support of the leadership of both of these communities. But this legislation also has the support of the Nashua Chamber of Commerce, the New Hampshire Business Industry Association, the New Hampshire Preservation alliance, and the Society for the Protection of New Hampshire Forests. Please vote today on the policy behind the Community Reinvestment Area bill. Senator O'Hearn, the prime sponsor and I, have met with Commissioners Bald and Reed. We are talking to them about coordination the development of applicable ground rules for this legislation. With these ground rules, the Finance committee will be able to come back to you with a bill that is complete and ready for your final action. I ask you to support the concept and the policy behind this bill and vote in favor of it. Thank you Mr. President.

SENATOR O'HEARN: Thank you Mr. President. I would just like to thank Senator Odell for his work behind this bill and bringing it to other parts of the state. I know that it originated with Senator Foster and myself. In the Nashua area, this is a win-win situation. This is something that is thinking outside the box and it is something that we are keeping an eye on as we are moving forward, and we are looking at some great possibilities that can happen around the state with this bill. Thank you Mr. President.

SENATOR D'ALLESANDRO: I think that I support the bill. I think that anything that we can do, particularly, as it affects the North Country, which is in dire need of amenities that can bring things to the North Country to embellish the lives of those people, I think, is critical. Senator Odell and Senator Gallus have done yeomen work and we certainly appreciate that. We have something to offer. The question is, how can we get the word out? How can we get people in to accept it? This takes us down that path. I appreciate the support of the Senate. Thank you.

SENATOR BELOW: Thank you Mr. President. I just want to observe that the committee did discuss a number of possible amendments to this, it hadn't really all congealed yet, so there was a recognition that this Economic Development Committee would continue to work with the Finance Committee in terms of refining the bill.

SENATOR GREEN: I don't like to throw cold water on ideas because I like to see ideas. For the record, many of you know my economic development background so I am not speaking from a point of view of trying to discourage the concept, but we have had these kinds of ideas before the state for many years, regarding investment credits. The state of New Hampshire, up to this point, has always come to the opinion that we were not going to compete with other states on the basis of doing these kind of incentives because once you start down that road of granting business credits, it has nothing to do with wanting to help the North Country, because I am committed to that, but when you start doing this on a statewide basis, what you really are doing is putting yourself in the marketplace of competing with other states in the credits area. I don't think that we have the ability as a state, to start giving credits against taxes that we have on the books, and we are not generating enough revenue. So how do you, on one hand, agree in principle, that you want to give credits against revenues, when you are sitting here knowing that you don't have the revenues to start with to meet your responsibilities in other areas? We have done very well in New Hampshire, I think, up to now, in terms of a small state, in getting companies to move here and helping our existing companies to grow. We have done it without incentives. If you start down that road as a policy and a philosophical way of doing business, it will be adding and adding, more and more credit requirements, against our tax structure. I don't think that we have the luxury to do that, not that I don't think that the concept may work, but when you start looking at it from a financial point of view, you may find that at the end of the year of some year, you are going to say, "wow, what have we done"? It is not that we don't want to encourage business. There are other ways to encourage business. My knowledge of economic development says that this is not on the top of the list when a company decides to come to New Hampshire. It is not. What is on the top of the list is what is the tax structure in the state? What is the cost of doing business in the state? What is the availability of labor in the state? What is the cost of energy in the state? This is not one that is going to make the



deal. So, it sounds like a good idea, but I am just cautioning you, you may be starting down a road that you will be sorry that you started down. I am not trying to be discouraging, but I want you to understand that this is not a new idea, we have thought about it before, but from the economic development point of view, we do not need this vehicle to make economic development in this state successful. Thank you.

SENATOR ODELL: Thank you very much Mr. President. Senator Green, you know my admiration and high respect for your career and your accomplishments, but I disagree strongly, both from the economic development standpoint and from a reality standpoint. The state of New Hampshire can be divided into two places. You have an area of the state, the North Country and the Western Country, that is why we have the North/West Initiative. In those areas, per family, per capita income, it is \$10,000 less than it is in other parts of the state, so yes, New Hampshire has done very well in drawing business to the state, but it has gone to certain areas. It hasn't gone to the west and it hasn't gone to the north and we have an obligation and a responsibility to do whatever we can do to help in those areas. From an economic development standpoint, I, too, have spent 12 years in that field of helping economic development zones to attract business in those areas. These happen to be in the foreign countries. We became the largest company in the United States offering that service. Our competitor being the large accounting firms. We were successful because those economic development regions in England, Germany, China and New Zealand, were all prepared to offer some incentives, but they weren't doing anything unique because those incentives are also offered all over the United States by economic development zones. There are hundreds of them. There is a National Association of Economic Development Zones because they are so popular. I think that it is unfair to think of this bill being something that will take us down a road that is uncertain. We already offer incentives. We offer infrastructure incentives. We offer employment training. We offer all kinds of things to encourage businesses to come in. This is a bill that doesn't take away from current revenue. These would be against future revenue, so when you have an economic development zone, whether it be in Nashua or whether it be in Berlin, these are places that are generating no business enterprise taxes right now and certainly no business profits taxes right now. This would be a future income. With the Department of Economic Development Resources, I think that we will find that this modern approach is applicable to the state of New Hampshire. I would also say, Mr. President, that if it doesn't work, we can change it. We can adjust it, but why would we stand with our feet in the concrete when places like Claremont and Berlin need the help, need an added tool to encourage businesses to look at those areas? We cannot operate long-term as two states, we need to make sure that we help build and encourage the families and the businesses in the north and the west to succeed so that we don't have this \$10,000 per family income gap between one part of the state and the other part of the state. I encourage you to support this bill.

SENATOR GATSAS: Senator Odell, as the legislation is written, if I were a company coming from another state, it does not seem that the legislation has any more incentive for me to move my company to Claremont or Berlin if the incentives are the same to move to Nashua. Would you agree, that I, as a company, would probably choose Nashua because of the location of airports, the proximity of other things, if those benefits are the same in Nashua, Claremont and Berlin?

SENATOR ODELL: Thank you Senator Gatsas. Just as Senator Green said, "there is no one thing that draws a business to a particular area". If you need access to Canada, route 91 is just over the border from Claremont, so that is a tremendous incentive in that area. If you are going down 91 to Connecticut, it is a tremendous asset. If you don't want congestion in your neighborhood, if you maybe want a lower per hour wage circumstance, that may be an incentive for an advantage to you. Also, in Nashua and Manchester, there are other communities than there are pockets. Remember, this legislation allows the community to find its own economic development area under guidelines set by DRED so that you can say in Nashua, a certain kind of business might be eager to go into a development zone, but many other companies might be looking for a Greenfield site. So one tool that would help all areas of the state, potentially, but I think that the west and the north can take the greatest advantage of it, and I think that we certainly will. Thank you.

SENATOR GATSAS: Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 73**, establishing a committee to study establishing enterprise zones in economically deprived or challenged communities. Energy and Economic Development Committee. Ought to pass with amendment, Vote 4-0. Senator Gallus for the committee.

**Energy and Economic Development**

**March 19, 2003**

**2003-0882s**

**09/04**

### **Amendment to SB 73**

Amend the title of the bill by replacing it with the following:

**AN ACT** establishing a committee to study establishing enterprise zones in economically deprived or challenged communities, and relative to the Black Brook Park Tax Increment Finance District.

Amend the bill by replacing section 6 with the following:

6 Black Brook Corporate Park Tax Increment Financing District. Notwithstanding the provisions of RSA 162-K:5, or any other law, the boundaries of the Black Brook Corporate Tax Increment Financing District located in Keene, Cheshire county, New Hampshire, established by Resolution R-95-6, of the Keene city council are hereby amended and expanded, by adding the following described parcel of land:

Being all the area located southwesterly of the northeasterly bound of the discontinued portion of the existing Summit Road as discontinued by the city council of the city of Keene on November 21, 2002, by Resolution R-2002-40A, and northeasterly of the southwesterly bound of the altered Summit Road as laid out by the city council of the city of Keene on November 21, 2002, by Resolution R-2002-42-B.

7 Effective Date. This act shall take effect upon its passage.

**2003-0882s**

### **AMENDED ANALYSIS**

This bill establishes a committee to study establishing enterprise zones in economically deprived or challenged communities.

The bill also expands the boundaries of the Black Brook Corporate Tax Increment Financing District located in Keene.

SENATOR GALLUS: Thank you Mr. President. I move that SB 73 ought to pass with amendment as recommended by the Energy and Economic Development Committee. This bill is a companion to the bill we just passed, SB 63. While SB 63 actually puts a plan into action to address economic development zones, SB 73 will allow a study committee to be established, which will look at different ways to approach the issue in the long run, through other means in addition to what SB 63 implements. The committee feels it is important that we look at other ways to improve the infrastructure of our state, and this committee will help do just that. I ask the full Senate to please support this bill. Thank you Mr. President.

SENATOR GREEN: Thank you Mr. President. I rise in support of this bill. I think that it is a good bill to study these issues and I want to go on record as supporting it.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 151-FN-A-L**, relative to the taxation of telecommunications poles and conduits. Energy and Economic Development Committee. Rerefer to committee, Vote 3-0. Senator Odell for the committee.

SENATOR ODELL: Thank you Mr. President. I yield to Senate Green.

### **MOTION TO TABLE**

Senator Green moved to have **SB 151-FN-A-L** laid on the table.

**Adopted.**

### **LAID ON THE TABLE**

**SB 151-FN-A-L**, relative to the taxation of telecommunications poles and conduits.

**SB 170**, relative to Public Service of New Hampshire. Energy and Economic Development Committee. Ought to pass with amendment, Vote 4-1. Senator Below for the committee.

**Energy and Economic Development**

**March 19, 2003**

**2003-0888s**

**08/04**

### **Amendment to SB 170**

Amend the bill by replacing all after the enacting clause with the following:

1 Repeal. 2000, 249:7, II as amended by 2001, 29:13, relative to the sale of PSNH assets, is repealed.

2 Authority to Issue Finance Orders to Finance RRB Costs. Amend RSA 369-B3, IV (b)(1)(A) to read as follows:

(1)(A) From competition day until the completion of the sale of PSNH's ownership interests in fossil and ~~[entitlement interests in nuclear]~~ **hydro** generation assets located in New Hampshire, PSNH shall supply all, except as modified pursuant to RSA 374-F:3, V(f), transition service and default service offered in its retail electric service territory from its generation assets and, if necessary, through supplemental power purchases in a manner approved by the commission. ~~[Once PSNH is no longer~~

supplying transition service, to the extent applicable, any provider or providers of transition service shall have been chosen through a competitive bid process, administered by the commission, to provide such service or as determined under RSA 374-F:3, V(c). The commission may, if it finds it to be in the public interest, divide the competitive bid process into multiple categories or multiple competitive bids;] ***The price of such default service shall be PSNH's actual, prudent, and reasonable costs of providing such power, as approved by the commission.***

3 Authority to Issue Finance Orders to Finance RRB Costs; Cost Reconciliation. Amend RSA 369-B:3, IV(b)(1)(D) to read as follows:

(D) Any difference between the price of transition service, exclusive of the portion attributable to the renewable energy component under RSA 374-F:3, V(f), from competition day to the day that PSNH ceases to provide transition service and PSNH's actual, prudent, and reasonable costs of providing such power as determined by the commission shall first be separated between the 2 groups of customers described in subparagraphs (b)(1)(B) and (b)(1)(C), used first to offset any differences described in subparagraph (b)(1)(B), and the net then reconciled for each group of customers either by changing the recovery end date, or by decreasing the stranded cost recovery charge, ***or if the recovery and date has passed, by implementing some other form of equitable reconciliation,*** as the commission finds to be in the public interest;

4 New Section; Divestiture of PSNH Assets. Amend RSA 369-B by inserting after section 3 the following new section:

369-B:3-a Divestiture of PSNH Generation Assets. The sale of PSNH fossil and hydro generation assets shall not take place before April 30, 2006. Notwithstanding RSA 374:30, subsequent to April 30, 2006, PSNH may divest its generation assets if the commission finds that it is in the economic interest of retail customers of PSNH to do so, and provides for the cost recovery of such divestiture. Prior to any divestiture of its generation assets, PSNH may modify or retire such generation assets if the commission finds that it is in the public interest of retail customers of PSNH to do so, and provides for the cost recovery of such modification or retirement.

5 Effect on Finance Order. The provisions of this act shall amend the specific provisions of public utilities commission Order No. 23,550, approving the issuance of rate reduction bonds, issued by the public utilities commission in Docket No. DE 99-099. All provisions of RSA 369-B, including the amendments made by this act, and all provisions of commission Order No. 23,550, as amended by this act, shall remain in full force and effect and are hereby ratified and confirmed in all respects. The provisions of this act shall not affect the validity, effectiveness, or finality of commission Order No. 23,550, or the validity of any rate reduction bonds issued thereto. The general court finds that commissioner Order No. 23,550, as amended by this act, satisfies all of the conditions and requirements of RSA 369-B, as amended, including without limitation, RSA 369-B:3, IV, and is deemed to be authorized and issued pursuant to RSA 369-B, as amended, and that the implementation of such order, as amended, is in the public interest.

6 The legislative oversight committee on electric utility restructuring established by RSA 374-F:5 shall submit a report no later than November 1, 2004, to the governor, the senate president, the speaker of the house, the senate energy and economic development committee, the house science, technology and energy committee, the state library, and the public utilities commission, recommending legislation to address the provision

of transition service and default service subsequent to April 30, 2006. In preparing the report, the committee shall consider the amount and volatility of wholesale and retail electricity prices in New Hampshire and throughout New England; the viability and number of competitive electric suppliers providing service in New Hampshire and throughout New England for different customer classes; the risks, costs, and benefits associated with different options for all electric utilities' continued provision of transition service; and other policy options to promote competition, low-cost energy, and renewable power.

7 Effective Date. This act shall take effect upon its passage.

**2003-0888s**

#### AMENDED ANALYSIS

This bill restricts PSNH from selling assets during the transition service period.

SENATOR BELOW: Thank you Mr. President. I move adoption of the committee report of ought to pass with amendment for SB 170. Eight years ago when this legislature embarked upon the long and complex effort to restructure the electric utility industry in New Hampshire, we had the highest average electric rates of all fifty states in the nation. At the outset, we recognized that one of the... well, really the principal goal of restructuring the industry was to bring us back into line with the regional price, in to competitive prices. We have substantially achieved that goal at this point. We now enjoy electric rates in New Hampshire that are very close to and competitive with the regional average. The committee amendment is found on page 47 and 48 of today's calendar. It is a complete replacement of the original bill, although in its core points, is consistent with the bill as introduced. The key section is section four of the amendment, which extends the prohibition on the sale of PSNH fossil and hydro generation assets, from the current date of February 1, 2004 out to April 30, 2006. It further provides that after that date, that PSNH may divest its generation assets if the commission, the Public Utilities Commission finds that it is in the economic interest of retail customers of PSNH to do so. Now the reason for extending this is because customers are at this point, benefiting from the fact that these existing fossil and hydro assets are relatively low costs. The company does have to procure some additional power to meet the load, but it is still resulting in rates that are very good for PSNH customers. This provision section also provides that PSNH may modify or retire such generation assets if the commission finds that it is in the public interest of retail customers of PSNH to do so, and provides for the cost recovery of such modification of retirement. That is...also an important point that was somewhat changed from the bill as introduced, instead of saying "expand generation assets" we used the term "modify", to make clear that it is the intent that the company be able to make appropriate capital investments in existing power plants such as replacing a boiler if that is found to be in the public's interest, and, that the commission provide for cost recovery. In saying that, I don't believe that it is the intent of this legislation to suggest that we should be incurring new stranded costs, rather in the first instance, it would be preferable to recover any such costs from customers who benefit from that investment, that is the customers who that generation is supplying, as opposed to looking to customers who may have chosen an alternative supplier to help pay for those costs. Another important feature of the committee amendment is section six of the amendment, which provides for the

Legislative Oversight Committee to look at a number of important issues and report back by November 1 of this year, in particular options for all electric utilities for continued provision of transition service and policy options to promote competition and low cost energy and renewable power. That is important, but although this bill addresses the problem for PSNH customers, we have customers of Granite State Electric and Until, who at this point, are scheduled to have their transition service end on April 30, 2006 so it is important that we, as a legislature, look forward to that date and contemplate how we can help those customers have some stability in competitiveness in their ongoing prices and not be potentially subject to a volatile short-term market at that date. The bill also incorporates a provision from SB 230, which is section three of the amendment, which simply makes some provisions from reconciliations of difference in the price between transition service and PSNH's actual costs after the recovery end date, which has to do with these part III stranded costs, which is how any difference in price is reconciled. It simply provides how those will be reconciled after that date, which is expected to be sometime before April 30, 2006. In conclusion, I urge adoption of the committee report of ought to pass with amendment, which was supported by a 4 to 1 vote. This will help PSNH customers continue to enjoy a stable and competitive electric rate. Thank you Mr. President.

SENATOR GATSAS: Thank you Mr. President. I rise in opposition to the committee amendment. Two years ago when I was first elected to the Senate, I didn't believe that I would be talking about deregulation, buckets, ratepayers costs, stranded costs or anything else. But in a short time, I kept asking the same question. That question was "what is the difference in New Hampshire versus what is happening in California"? The answer that I kept getting for probably two months was, "oh, it is different". I never got an answer. We continue to talk about electric rates and what was happening, sale of Seabrook, the different buckets and stranded costs. The Senate came up with an amendment that 23 Senators signed onto and that was HB 489. That bill, when it came before us, and all of the Senators signed onto it, said that for 21 months after competition day, until initial transition end day, the price of transition service for these customers shall be 4.6 per kilowatt hour. We have gone through that period. We said that we were going to relook at it two years later. The argument two years ago wasn't about the price. It was about holding onto the fossils and hydros, and New Hampshire was finally lucky, because we owned or had fossils and hydros supplying electricity to our citizens. What has changed? The only thing that has changed in two years is the economy is worse. I asked a question in committee, actually I was told that I was right two years ago. That was said to me by PSNH. I wasn't right. The House and the Senate were right. We looked at a piece of legislation and said that the customers in the state of New Hampshire should have some protection and I agree that we should have some protection, but should we extend the stranded costs? Absolutely not. The sale of Seabrook brought more than we anticipated. The stranded costs date, now comes back to 2004. Customers were rated until 2006. We had a safety net, why don't we want to use that? Why do we want to tell customers in 2004 that their rates have gone up ten percent, the stranded costs of 1.1 cent has been relieved, but you are not seeing a decrease in your rates. I don't think that is what we were sent here to do. We have an opportunity today, and let's talk about first, the increase to commercial customers. In a three month period, from September from

the filing date of the docket, PSNH went in for a rate of 4.47 cents. Within three months, that rate increased by 6 percent. Annualized, that is 24 percent; however, in that docket, PSNH still receives a 10 percent margin of profit. When is it time that the stockholders start taking some of the burden and not the ratepayers, because yes, we are going to do a deal for Connecticut Valley Electric Company (CVEC) in the western part of the state to help them. That is going to extend stranded costs by three months. I don't say that is wrong, because the rates out there are too high. And, we should help them. We should have helped them sooner. But we shouldn't be looking today, at putting any more burden on ratepayers. We are going to hear people say, "well you know Ted, you should be for the open market." I agree, the open market should be here, but do we think that my 86 year old grandmother or somebody else's mother should see rate increases of 10 percent or 20 percent? I don't think that should happen, especially when we have the ability to use the bucket three that we had, that said that those stranded costs would be available until 2006 and the ratepayer knew that. We have the ability now that that date is shortened to 2004. We hear that "well, we shouldn't be subsidizing over costs." There is \$186 million of costs that are going to reduce that stranded cost day a lot shorter. Why? Because the price of electricity isn't that much higher than what PSNH is providing it for. Eighty percent of the people in this state, with the completion of CVEC will be under the PSNH umbrella. I look at every one of you because almost all of us have those constituents in our district, so I say that it is important that we protect those ratepayers. That is what we did two years ago, today is no different. I urge you to vote down the committee amendment and I will present you with another amendment that puts a ceiling of a 5 percent cap on the rates that they can charge. At least then, we are protecting the ratepayers. Thank you.

SENATOR CLEGG: Thank you Mr. President. I rise in support of the committee amendment. I listened to my colleague talk about freezing rates. When you freeze rates, all that you do is create an IOU. If it costs more than what they are getting, you pay for it later, so you are not cutting anybody a break. You are just telling them that we kept your rates low, and then we whisper, but I signed your name to an IOU. I don't think that is what anybody here wants to do. We, in New Hampshire are definitely on a unique system. We could be like California. We could be like the rest of New England, but we are not. We are keeping our hydro, fossil fuel plants and we need to do so for rate stability. Because we have a diverse mixture of fuels, there are less fluctuations in the energy market. The lower cost power through the use of these plants because they have been depreciated over the year. Local control is maintained with state oversight and regulation. The legislature, two years ago, talked about freezing rates. The legislature was adamant that the rates should be based on costs. The concern was that it was difficult for the legislature to look into the future and be certain where energy costs were headed. Should costs decrease with the rate freeze, customers were locked into higher rates. Should they increase, they will eventually be higher costs because of the deferrals. Two years ago, the legislature decided that basing rates on costs, provides more certainty to customers and prevents potential price shocks when the freeze expires. No one can say with any certainty that we can calculate what will happen in the energy market in the next two years. I would suggest that we have not been provided with enough information to prove to me, that we need to overturn something that continues to provide rate certainty for a mecha-

nism that merely provides a temporary freeze and a long-term dilemma. Rate caps are what precipitated the California problem. We don't want to be like California. It has been very critical for states moving forward towards restructuring to provide some initial temporary stability during the early phases of transition service. New Hampshire did that when it required that residential customers rates be set at 4.4 and large customers to be set at 4.6 for the initial phase. We are past that phase. It provided some stability; however, SB 170 provides for prolonged rate certainty by requiring that PSNH hold on to its generation. A rate freeze is not necessary on top of that requirement. We don't know what will come in the future. There has been some recent announcements on new energy service prices, transition service and default service, and this indicates to me that contemplating a rate freeze is short sighted. Maine Central Power, 6.1 cents **TAPE CHANGE** for large customers. Small customers, 5.9. While the residential customer rate at 4.9 seems to indicate that a freeze at five cents is in the best interest. Let me share with you what is anticipated to happen with another New England utility, Mass Electric. The rates are going from 5.1 to 7.3, an increase of 21.9 in the overall bill. A rate freeze in that case would cause severe deferrals, sharp price shots at the end of the freeze. What all of those numbers seem to indicate loud and clear to me, that artificially fixing costs is not in the best interest of the customers. We can really accurately project what the actual cost of power is going to be. As far as the increases associated with the 4 percent transition service, when the world watched the cost for electricity increase dramatically in other states and impacted New Hampshire, when fuel costs were higher, that means the costs of a slice of energy to PSNH must purchase in the open market, during those periods is also high. It gets passed on to the customers; in addition, by the sale of Seabrook, there was major outage at the plant that required additional market purchases. Luckily the major portion of the energy required to supply PSNH customers came from their own plant. The increasing cost due to the market purchases required to meet the total demand for a small portion, less shielding PSNH customers from high rates. It is my strong suggestion that we all band together and support the work that the committee did, protect our customers in the state of New Hampshire, by keeping our fossil fuels, but let's not lie to them by locking in rates so that in two years they get hit with double increases. Thank you Mr. President.

SENATOR GATSAS: Senator Clegg, would you believe that I absolutely agree with you 1000 percent that we should not sign an IOU for customers? But would you also believe that the overrecovery, "the overrecovery" that is in the docket that I just referred to, was \$29 million for 2001 and \$43 million for 2002, \$43 million for 2003 and \$43 million for 2004 as projected, and \$28 million for 2005. So Senator, I don't think there is an IOU, I think that we have overrecovery charges so that the rates that we have are not artificially high. Wouldn't you agree?

SENATOR CLEGG: Senator Gatsas, I would say that the numbers that you just recited to me, may in fact be overrecovery, which is put in a bank that collects interest, solely to the benefits of the ratepayer, which will mean that in 2006, we will have no more stranded costs. So I will agree with you that we are putting money away to benefit the customers. Yes.

SENATOR GATSAS: But Senator, the overrecovery charges, don't end the stranded costs in 2006, they conclude the stranded costs in 2004.

SENATOR CLEGG: So much the better. It is still for our benefit Senator.



SENATOR GATSAS: For the ratepayers benefit?

SENATOR CLEGG: Absolutely.

SENATOR SAPARETO: Thank you Mr. President. Actually this is a question for either Senator Clegg or Senator Gatsas. Do either one of you know what the annual dividends paid from PSNH were for last year or more recent per share?

SENATOR GATSAS: According to the docket that was filed for their rate increases, it was a ten percent increase, a ten percent dividend or...ten percent profit, I am sorry. Ten percent profit. I don't know what the dividend rate was. In their docket it was a ten percent profit.

SENATOR SAPARETO: Thank you.

SENATOR CLEGG: Thank you Mr. President. Since the Senator asked either one of us, I don't know how you can tell that because Public Service is an NU company now, so I don't know how you could say how much money they made off of the state of New Hampshire since they are a larger company, if you are talking dividends for the stockholders.

**Recess.**

**Out of recess.**

**Question is on the adoption of the committee amendment.**

**Amendment adopted.**

Senator Gatsas offered a floor amendment.

Sen. Gatsas, Dist. 16

**March 27, 2003**

**2003-1008s**

**08/04**

### **Floor Amendment to SB 170**

Amend the bill by replacing all after the enacting clause with the following:

1 Repeal. 2000, 249:7 as amended by 2001, 29:13, relative to the sale of PSNH assets, is repealed.

2 Authority to Issue Finance Orders to Finance RRB Costs. Amend RSA 369-B:3, IV (b)(1)(A) to read as follows:

(1)(A) From competition day until the completion of the sale of PSNH's ownership interests in fossil and ~~[entitlement interests in nuclear]~~ **hydro** generation assets located in New Hampshire, PSNH shall supply all, except as modified pursuant to RSA 374-F:3, V(f), transition service and default service offered in its retail electric service territory from its generation assets and, if necessary, through supplemental power purchases in a manner approved by the commission. ~~[Once PSNH is no longer supplying transition service, to the extent applicable, any provider or providers of transition service shall have been chosen through a competitive bid process, administered by the commission, to provide such service or as determined under RSA 374-F:3, V(e). The commission may, if it finds it to be in the public interest, divide the competitive bid process into multiple categories or multiple competitive bids.]~~ ***The price of such default service shall be PSNH's actual, prudent, and reasonable costs of providing such power, as approved by the commission, provided that such price for residential service customers shall not exceed \$.050 per kilowatt-hour prior to April 30, 2006 or the recovery end date in the April 19 order, whichever comes first.***

3 Authority to Issue Finance Orders to Finance RRB Costs; Cost Recconciliation. Amend RSA 369-B:3, IV(b)(1)(B)(ii) to read as follows:

(ii) From initial transition service end day to the day that PSNH ceases to provide transition service, the price of transition service shall be PSNH's actual, prudent, and reasonable costs of providing such power, as approved by the commission, ***provided that such price shall not exceed \$.050 per kilowatt-hour prior to April 30, 2006 or the recovery end date described in the April 19 order, whichever comes first***, together with, for those customers choosing a renewable energy transition service option under RSA 374-F:3, V(f), the price of the renewable energy component. Thereafter, the price of transition service, if offered, shall be the competitively bid price for transition service, or as determined under RSA 374-F:3, V(e), together with, for those customers choosing a renewable energy transition service option under RSA 374-F:3, V(f), the price of the renewable energy component;

4 Authority to Issue Finance Orders to Finance RRB Costs; Cost Recconciliation. Amend RSA 369-B:3, IV(b)(1)(D) to read as follows:

(D) Any difference between the price of transition service, exclusive of the portion attributable to the renewable energy component under RSA 374-F:3, V(f), from competition day to the day that PSNH ceases to provide transition service and PSNH's actual, prudent, and reasonable costs of providing such power as determined by the commission shall first be separated between the 2 groups of customers described in subparagraphs (b)(1)(B) and (b)(1)(C), used first to offset any differences described in subparagraph (b)(1)(B), and the net then reconciled for each group of customers either by changing the recovery end date, or by decreasing the stranded cost recovery charge, ***or if the recovery and date has passed, by implementing some other form of equitable reconciliation***, as the commission finds to be in the public interest;

5 New Section; Divestiture of PSNH Assets. Amend RSA 369-B by inserting after section 3 the following new section:

369-B:3-a Divestiture of PSNH Generation Assets. The sale of PSNH fossil and hydro generation assets shall not take place before April 30, 2006. Notwithstanding RSA 374:30, subsequent to April 30, 2006, PSNH may divest its generation assets if the commission finds that it is in the economic interest of retail customers of PSNH to do so, and provides for the cost recovery of such divestiture. Prior to any divestiture of its generation assets, PSNH may modify or retire such generation assets if the commission finds that it is in the public interest of retail customers of PSNH to do so, and provides for the cost recovery of such modification or retirement.

6 Effect on Finance Order. The provisions of this act shall amend the specific provisions of public utilities commission Order No. 23,550, approving the issuance of rate reduction bonds, issued by the public utilities commission in Docket No. DE 99-099. All provisions of RSA 369-B, including the amendments made by this act, and all provisions of commission Order No. 23,550, as amended by this act, shall remain in full force and effect and are hereby ratified and confirmed in all respects. The provisions of this act shall not affect the validity, effectiveness, or finality of commission Order No. 23,550, or the validity of any rate reduction bonds issued thereto. The general court finds that commissioner Order No. 23,550, as amended by this act, satisfies all of the conditions and requirements of RSA 369-B, as amended, including without limitation, RSA 369-B:3, IV, and is deemed to be authorized and issued pursuant to RSA 369-B, as amended, and that the implementation of such order, as amended, is in the public interest.

7 Report. The legislative oversight committee on electric utility restructuring established by RSA 374-F:5 shall submit a report no later than November 1, 2004, to the governor, the senate president, the speaker of the house, the senate energy and economic development committee, the house science, technology and energy committee, the state library, and the public utilities commission, recommending legislation to address the provision of transition service and default service subsequent to April 30, 2006. In preparing the report, the committee shall consider the amount and volatility of wholesale and retail electricity prices in New Hampshire and throughout New England; the viability and number of competitive electric suppliers providing service in New Hampshire and throughout New England for different customer classes; the risks, costs, and benefits associated with different options for all electric utilities' continued provision of transition service; and other policy options to promote competition, low-cost energy, and renewable power.

8 Effective Date. This act shall take effect upon its passage.

### 2003-1008s

#### AMENDED ANALYSIS

This bill restricts PSNH from selling assets during the transition service period.

SENATOR GATSAS: Thank you Mr. President. I rise to offer a floor amendment and I'll speak to the amendment. There is no question that the economy has changed from two years ago. Certainly everybody will agree that it is not any better. Certainly we look to the future and hope it does brighten. I think that it is important that we understand that...and if I thought that I was going to sit around and read dockets to understand better how electric rates were set, I would say to all of you that isn't what I came here for. But when it comes to protecting the ratepayer, I believe that is an important issue. I believe that putting a cap of five cents or .05 per kilowatt is important to the ratepayers. That is basically the only change that you see in this amendment before you. I think that it is important that we take a look at some of the testimony that went before the PUC about looking to increase rates at the time. The question that is here, "do you have any specific comments on the intervener testimonies"? The testimony here is by PSNH. I quote, "Customers, therefore, getting the best of both worlds, low prices and the ability to select a supplier." Based on a question that was asked by constellation. The answer, "Constellation admits that the price volatility already exists, yet it ignores the legislative findings that the customers should be protected from such volatility." That is PSNH's quote. So I say to you, when they go in for a rate increase, they talk about volatility. Why are we not concerned about volatility to the ratepayer? Why are we not concerned that we are putting them out on a lurch? Stranded costs aren't going further than 2006. We had from 2004 to the middle of 2006 to collect those stranded costs and to help the ratepayer. Free market is wonderful, but when the rates are at six and seven cents, that doesn't help anybody. Last year when we put that amendment into place, rates dropped 10 percent. At the end of 2004 when the stranded costs just disappear again, rates will have the ability to drop 10 percent. So I look at my colleagues here and say, there is no difference between these two bills other than a cap to protect the ratepayer in a bad economy. Senator Green spoke about why we would do things for companies moving to New Hampshire

and electric rates being one of them. I agree. That is an important issue. So when a company can lock in 10 percent profits, we should lock in a ceiling for ratepayers. That should help the ratepayers. Thank you.

SENATOR BELOW: Thank you Mr. President. I rise in support of the Gatsas amendment. I did support the committee amendment, and this amendment simply reinstates the entire committee amendment except for three lines on 18, 19, 20, 25, 26 and 27 of the first page. It does put in a clause that says "provided that such price" and this has to do with either the default service price or transition service price for residential customers only, "shall not exceed \$.050 per kilowatt-hour prior to April 30, 2006 or the recovery end date" described in the April 19<sup>th</sup> order, which is a defined term in the statute. What this would mean is that it would provide some assurance of stability until we get to that recovery end date point, which is by all expectations, expected to arrive well before April 30, 2006 when customers will see a substantial price drop about 1.1 cents per kilowatt hour. So you can see that we are going to get to a point where prices go down because of that drop. This cap would end at that point, so that even if prices went up a whole penny at that point, customers would still have the same price. Now it is important to note that we have currently, for residential customers, the price is stipulated at 4.6 cents until next February. For industrial customers, it has shifted to the companies actual costs. The projection of that through a recent docket was 4.67 cents for this year that we are in now, going forward. That is because the company has to purchase some power. It is important to note their current fossil and hydro plants are currently producing somewhere around 4 cents a kilowatt hour, maybe even a little bit less. They are generally supplying over 80 percent of their load. They have to purchase some portion at times. But if you assume that they even have to purchase 20 percent of their load going forward, you would have to have a market price of over 9 cents per kilowatt hour to come up with a blended rate of over 5 cents per kilowatt hour. At the point when we get to that recovery date and the price drops by 1.1 cents, you would have to have a market price, an average market price of up around 15 cents per kilowatt hour to get to a blended rate that is higher than what would be equivalent to the cap of five cents plus that stranded cost charge. My point is that I think that what has been occurring... I share Senator Clegg's concern that we not create deferrals that just means that we have to pay something later, but we have had a mechanism to date, where we have had this bucket, as Senator Gatsas has called it and it has been called. This bucket called part III stranded costs, in which we have actually been banking a credit. Tens of millions of dollars a year between what has been the price and what has been PSNH's costs? Their cost has actually been less than the price to date, which recently went up from 4.4 to 4.6 for residential and up to 4.67 for industrial. We have been banking a large credit, which has been shortening the date when those costs would be recovered and the price will go down by 1.1 cents. We probably can still continue to bank, but what this would say is that if the blended price went over five cents, until we get to that point where we see that drop from that recovery end date, until we get to that point, we would pull some of that credit out of the bank. If the actual blended costs ended up more than five cents a kilowatt hour, which would mean a market price, a sustained market price of over 9 cents a kilowatt hour, if it got that high, then instead of putting that on the residential customers in this period of economic uncertainty, we would draw from the bank where we have put away some credit. When we get to that point where that bank is canceled, when we have ended the recovery of these

Part III stranded costs, through that stranded cost charge, then this cap would go away. We can afford the risk of the higher prices that would occur at that point because we are going to see about a 1.1 cent drop. This is sort of a hybrid. It would allow some price increases from the current 4.6. It would allow the company to, in any case, recover its actual prudent, reasonable cost. It might theoretically, at a very high sustainable market price, create some small modest deferrals, but we have already put money in the bank that we can offset that with. It would just provide us with a sort of smoother glide path, I think, to the point of when we get to that recovery end date. Thank you Mr. President.

SENATOR GREEN: I am confused I guess. That is not a good state to be in. Senator Below, my confusion is that you voted in committee for the amendment, you wrote the amendment, and you stood up in support of your own amendment, and now after caucus you come back to us and support a different amendment. I have a hard time with logically following the process. Would you please explain that to me?

SENATOR BELOW: Well Senator Gatsas' floor amendment incorporates all respects in the committee amendment except for these two additional provisions. At the time that the committee took it up this concept hadn't really been worked out. Senator Gatsas wanted to lock it in at the 4.6 for instance, I thought that was a mistake. I thought that there should be some room to raise that price, to minimize the risk of deferrals. I am just continuing to think about it, I think that this is sort of a reasonable middle ground, if you will, that minimizes the risk of deferrals, there might be some, but there are extremely unlikely to be more than what we have already put into the bank from savings, if you will, so that we have sort of negative deferrals now, and that we are putting away credits in this bucket. I think that in light of the economic uncertainty of the current times, it might be good to say that for the next couple of years that we have some stability. It may go up some. We can go up four tenths from what we are today, which is about a four percent increase in the total price, but we would have some stability. I might note that I am a Granite State Electric customer. Granite State is out of the generation business. Our energy is supplied by a company called Constellation Energy and they came back in with a competitively procured price last year, and the average price is a little under five cents per kilowatt hour that was based on acquiring it in the market, all market or whatever assets that they own, I am not sure if they own or what they own, but the point is, I guess, that even some of the numbers that Senator Clegg cited, companies that might have seven cent on a market price, based on current conditions today, even if PSNH were having to buy at that kind of price, they could still end up with a blended rate of under five cents a kilowatt hour, so it is just sort of a high end stop loss measure, if you will.

SENATOR GREEN: Okay. Thank you Senator Below.

SENATOR GREEN: Thank you Mr. President. I have been listening to the debate on this since my ears became directed by Senator Gatsas, basically, to take a look at this issue closely. I respect Senator Gatsas very much and I feel very strongly that he believes that he is right on this issue; however, I don't agree with him. It doesn't mean that I don't respect him, it means that I think that if we do this, we get into the rate setting business as a Senate and as a legislature. I don't think that is a place that we want to be. That is what we have a PUC for. I don't believe that whichever bill passes, your amendment or the original as amended, is going to make a heck of a lot difference one way or the other, if I thought

that, I would be supporting your amendment if it was a major change, but I don't see that as happening. I am going to be on record as supporting SB 170 as amended as ought to pass. I would encourage you all to vote that way. Thank you.

SENATOR CLEGG: Thank you Mr. President. I rise against the amendment. We talked about rates going down after we did this whole deregulation. Sure they did. We had Public Service Stockholders eat \$400 million. If we are going to start sitting here in this chamber and deciding that because someone pays their stockholders dividends that we should force them to reduce their prices until there is no more stockholders dividends, then hold onto your britches because pretty soon there won't be any BET or BPT to collect here either, because no one would want to be in a state that says stockholders who have taken a risk don't deserve some kind of return for their money. We are talking about capping rates for residential in this amendment. We are not saying anything about capping the rates for business. So if my costs rise, who gets hit? The very people that we are trying to bring in here so that we can have some jobs so that we can have better times. What are we really doing when we cap the rates? We are just holding it off for another period. We worked hard in this state. They sold Seabrook. We reduced the amount of time that it was going to take to pay off stranded costs and now what we are saying is, oh, we did such a good job, let's try to extend it all again. I don't see where anywhere that is in the benefit of the ratepayer. Thank you Mr. President.

SENATOR GATSAS: Senator Clegg, are you saying that if I included the commercial customers in this amendment, that you would be in favor of it?

SENATOR CLEGG: No, Senator Gatsas. I am saying that you only went out after one-half. You were half wrong, if you had included the business, you would have been wholly wrong.

SENATOR GATSAS: Mr. President and my fellow colleagues, if we think that the \$400 million that the stockholders absorbed, I don't know what the number that the ratepayers absorbed. I think that Senator Clegg will agree that when you make a business venture you have risks. The ratepayers never entered into a business venture. They were the held captive audience who had to have power to do their wash, to feed their children, to heat their homes. So at no time should we compare what loss PSNH had, because I can't tell you, I wasn't in the middle of the negotiations, to tell you what the ratepayers loss was, in those bucks. I am sure that Senator Below has probably got them on the tip of his tongue, but I think that, again, this is about ratepayers in a tough economy. If I thought that for one second, that we were signing an IOU, I would never be standing before you to be half wrong. But in my heart, I know that I am 100 percent right. So I can look at you and say to you that I feel confident and very... I can put my head on the pillow tonight and say that I feel good about the ratepayers. Thank you Mr. President.

**Recess.**

**Out of recess.**

**Floor amendment failed.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 230**, relative to transition service and relative to the sale of PSNH generation assets. Energy and Economic Development Committee. Rerefer to committee, Vote 4-1. Senator Below for the committee.

**SENATOR BELOW:** Thank you Mr. President. I move adoption of the committee report that SB 230 be rereferred to committee. Senate Bill 230 was basically identical in nature and intent to SB 170, which we have just passed. The committee feels that it would be appropriate to rerefer this bill in case we need a vehicle to address outstanding issues related to this topic, such as those that might arise from the report of the Legislative Oversight Committee called for in SB 170, which won't actually report until after the filing deadline next fall. Thank you Mr. President.

**Committee report of rerefer is adopted.**

**SCR 3**, urging maintenance of funding for the Low Income Home Energy Assistance Program. Energy and Economic Development Committee. Ought to pass with amendment, Vote 4-0. Senator Below for the committee.

**Energy and Economic Development**

**March 20, 2003**

**2003-0910s**

**05/03**

**Amendment to SCR 3**

Amend the resolution by replacing all after the title with the following:

Whereas, New Hampshire's federal allocation of the Low Income Home Energy Assistance Program (LIHEAP) is used to operate the statewide fuel assistance program, which provides benefits to qualified New Hampshire residents, such as low-income elderly, disabled, and low-income working households, to assist with paying their energy bills during the winter season. The fuel assistance program also helps New Hampshire residents in a heating emergency by securing an emergency delivery of fuel, delaying a shut-off notice, or referring individuals to another source of assistance; and

Whereas, fuel costs for this winter have proven to be higher than expected and higher than last winter, while the average temperature thus far this winter has been colder than usual; and

Whereas, during the 2001-2002 heating season, New Hampshire received \$13.2 million in LIHEAP funds based upon a \$1.7 billion federal appropriation. With these funds, New Hampshire assisted 24,876 low-income households, but was not able to provide full benefits to all income-eligible seniors and working poor families that requested assistance; and

Whereas, New Hampshire's fuel assistance program made numerous programmatic changes prior to this winter to further maximize federal LIHEAP dollars this winter season, including reducing income eligibility levels and reducing benefits amounts. In spite of these efforts, sufficient federal funds do not exist to serve all eligible New Hampshire residents who request assistance; and

Whereas, states are developing new and innovative ways to stretch available program resources, including the use of pre-purchase programs during the summer months that are not adequately supported by the current program legislation; and

Whereas, last winter many low-income residents unnecessarily suffered and took extreme and dangerous measures to stay warm. Results of a 2002 winter survey of New Hampshire's low-income residents identified disturbing facts which include that 16.4 percent of the over 900 respon-

dents, many of whom are elderly, disabled, facing severe medical problems, or caring for small children, used dangerous alternatives to heat their homes, such as space heaters or ovens. Another 7.3 percent of the respondents indicated they went without medical care or medicine; and

Whereas, the current authorization level, set at \$2 billion, is not sufficient to meet the current need for program assistance as a result of rising unemployment and poverty levels and continuing volatility in energy pricing; and

Whereas, uncertainty in appropriations due to the lack of advance funding has made it more difficult for the states to set program eligibility levels and take advantage of program buying opportunities; now, therefore, be it

Resolved by the Senate, the House of Representatives concurring:

That the general court hereby urges the New Hampshire congressional delegation to support:

I. Extending LIHEAP's authorization through fiscal year 2008;

II. Maintaining the current funding formula and hold-harmless provisions in order to maintain adequate funding levels for the region's programs;

III. Increasing the authorization level to \$3.4 billion; and

IV. Allowing states to draw-down funds prior to the start of the winter hearing season in order to take advantage of pre-purchase and other discount programs; and

That copies of this resolution be forwarded by the senate clerk to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the New Hampshire congressional delegation.

SENATOR BELOW: Thank you Mr. President. I move adoption of the committee report on SCR 3 of ought to pass with amendment. The last couple of years have put a heavy burden on many of our citizens who have suffered from high energy prices for heating their homes. This last winter has been particularly tough with the rising energy costs and difficult economic times and many families in New Hampshire have been forced to rely on government assistance to help provide for their energy needs. This resolution asks the federal government to extend the low income Home Energy Assistance Program and to continue funding at the federal level, at a level that will be sufficient to meet the need. I urge your support of the unanimous committee report of ought to pass with amendment. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**Recess.**

**Out of recess.**

### **MOTION OF RECONSIDERATION**

Senator Johnson, having voted with the prevailing side, moved reconsideration on **SB 80**, relative to vocational education and the automotive technology curriculum, whereby it was referred to the Finance Committee.

**Adopted.**



**SB 80**, relative to vocational education and the automotive technology curriculum.

Senator Johnson offered a floor amendment.

Sen. Johnson, Dist. 2

**March 27, 2003**

**2003-1012s**

**04/10**

### **Floor Amendment to SB 80**

Amend the bill by replacing section 3 with the following:

3 New Subdivision; Automotive Technology Curriculum and Advisory Council. Amend RSA 188-E by inserting after section 17 the following new subdivision:

Automotive Technology Curriculum and Advisory Council

188-E:18 Automotive Technology Curriculum; Funding.

I. The department of education shall develop and implement an automotive technology curriculum in the regional career and technology education centers to provide statewide opportunities for high school students interested in careers in the automotive industry to enroll in a high quality automotive technology curriculum.

II. The state board of education shall adopt rules, pursuant to RSA 541-A, relative to course content, curricular requirements, and general procedures for implementing the automotive technology curriculum. At a minimum, the curriculum shall include standards established by the National Automotive Technicians Education Foundation (NATEF).

III. In developing and implementing an automotive technology curriculum, the efforts of the department of education shall complement existing public and private actions, and shall include the pursuit of innovative public-private partnerships with businesses, nongovernmental organizations, the community-technical college system, and other appropriate groups. Such partnerships shall at a minimum consist of a 50/50 match of public and private funds, or like kind compensation.

(a) Funding shall not exceed \$5,000 per automotive technology program or \$90,000 in total non-lapsing appropriations in a fiscal year. Such funding shall be used exclusively to assist an automotive technology program in obtaining or maintaining NATEF certification and may include instructor professional development, including ASE certification, automotive laboratory equipment, hand tools, maintenance of equipment or tools, learning resources, multimedia periodicals, and any other items deemed necessary to assist an automotive technology program in obtaining or maintaining NATEF certification.

(b) Automotive technology programs that will meet certification requirements within 2 years shall be given priority for funding. All other programs not eligible to be certified within the first 2 years shall be eligible for any remaining funding.

IV. When appropriate, the department of education shall include in its biennial capital budget request funding for the planning, construction, and renovation of equipment necessary for the operation of automotive technology curriculum in the regional vocational education centers.

V. Regional career and technology education centers which implement the automotive technology curriculum shall be responsible for maintaining the program with funding requests made through the budgetary cycle.

VI. Existing or new technical education centers that provide automotive technology education shall obtain program certification pursuant to paragraph II of this section prior to becoming eligible to receive

state renovation and construction funds. All documentation relating to program certification shall be submitted to the automotive technology advisory council established in RSA 188-E:19 for approval prior to release of any such funding.

188-E:19 Automotive Technology Advisory Council. There is established an automotive technology advisory council to advise the department of education in the implementation and expansion of the automotive technology curriculum, to assist the department of education in pursuing public and private funds in order to ensure statewide access for all public high school students to automotive technology curriculum coursework, and to review and make recommendations on all requests for automotive technology renovation projects presented pursuant to RSA 188-E:18, VI.

188-E:20 Membership and Terms.

I. The members of the advisory council shall be as follows:

(a) One member of the house of representatives, appointed by the speaker of the house.

(b) One member of the senate, appointed by the president of the senate.

(c) The commissioner of the department of education, or designee.

(d) The commissioner of the regional community-technical college system, or designee.

(e) One automotive instructor teaching in the community-technical college system, appointed by the governor and council.

(f) One secondary education career technical education administrator, appointed by the governor and council.

(g) Four members of the New Hampshire Automobile Dealers Association, appointed by the governor and council.

II.(a) The term of office for each member appointed under subparagraphs I(e), I(f) and I(g) shall be 3 years, or until a successor is appointed and qualified in the case of a vacancy. The term of office for all other members shall be coterminous with the term of office for the position that qualifies that member to serve on the advisory council. A vacancy shall be filled in the same manner, but only for the unexpired term.

(b) The advisory council shall meet at least quarterly, and may meet more often at the call of the chair, or at the request of a majority of the members directed to the chair. The council may, by majority vote of the voting members, adopt additional bylaws as deemed necessary by the council.

(c) The council shall, at its annual meeting, elect one voting member to serve as chair for a one-year term, or until a successor is elected and qualified. No member shall receive any compensation for serving on the council, provided that the legislative members shall receive legislative mileage when in performance of their duties and the public members may receive compensation dependent upon the availability of funds, other than from the general fund.

SENATOR JOHNSON: I move to reconsider SB 80 and I was on the prevailing side on that bill. The committee amendment that SB 80, which was passed this morning, contained an error which did not reflect the wishes of the committee and we have corrected it with a floor amendment. What happened in that original amended bill was that they left out the membership and the terms, so we are putting that back in, in this floor amendment.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 35**, relative to the transfer and exchange of certain state-owned land for certain land owned by the Manchester water works. Environment Committee. Ought to pass with amendment, Vote 3-2. Senator Below for the committee.

**Environment**  
**March 19, 2003**  
**2003-0885s**  
**08/04**

### **Amendment to SB 35**

Amend the bill by replacing all after the enacting clause with the following:

1 Statement of Purpose. The purpose of this act is to permit the exchange of a 7 acre parcel of land owned by the state of New Hampshire for a 16.3 acre parcel of land and a 14.6 acre parcel of land for a total of 30.9 acres of land owned by the city of Manchester, Manchester water works. Subject to the conditions in this act, this exchange will allow Manchester water works to acquire a site upon which to construct a new public water supply source at a future date for the city of Manchester and 6 towns in the surrounding region.

#### **2 Findings.**

I. The general court finds that the state of New Hampshire acquired an approximately 7 acre parcel of land formerly owned by Public Service Company of New Hampshire, located on the western side of the Merrimack River and fronting on Goonan Road and Kimball Drive (formerly Riverside Road) in Hooksett, New Hampshire. This 7 acre parcel having approximately 500 feet of river frontage was originally acquired under the land conservation investment program by the New Hampshire fish and game department for the purpose of developing a boat access to the Merrimack River. However, the department was able to fulfill this objective at Lambert Park, in Hooksett, New Hampshire, thereby satisfying the original intent of providing boat access to the Merrimack River. The 7 acre parcel is now held in public trust primarily as a roosting site for eagle habitat by the New Hampshire fish and game department.

II. The general court finds that the city of Manchester, Manchester water works, owns a 16.3 acre parcel of land on the easterly side of the Merrimack River having approximately 3945 feet of river frontage in Hooksett, New Hampshire, and a 14.6 acre parcel of land with 2334 feet of river frontage.

III. The general court finds that the city of Manchester, Manchester water works, will utilize the 7 acre parcel of land for significant public benefit to construct a Merrimack River intake pumping station, water treatment plant, and associated infrastructure to provide for the future water supply needs of the regional Manchester area with a long term plan that minimizes environmental impacts and maintains the integrity of the land conservation investment program.

IV. The general court finds this land exchange to be in the public interest as the land exchange will enhance the land conservation investment program as both parcels, the 16.3 acre and the 14.6 acre parcels of land to be exchanged by the city of Manchester, Manchester water works for the 7 acre parcel acquired under the land conservation invest-

ment program and currently managed by the fish and game department, will be managed as a roosting site for eagle habitat consistent with the original purpose of the 7 acre acquisition.

V. The general court finds that in this specific and unique instance, this act balances the public purposes of providing a suitable public drinking water supply source with the need to ensure that the public's investment in conservation lands through the land conservation investment program is not diminished.

### 3 Transfer and Exchange.

I. Subject to the conditions below, and notwithstanding the prohibitions in RSA 162-C:10, the general court hereby authorizes and approves the exchange of an approximately 7 acre parcel of land in Hooksett, New Hampshire, now owned by the state of New Hampshire under the land conservation investment program and held in public trust by the New Hampshire fish and game department, for the 2 parcels of land for a total of 30.9 acres owned by the city of Manchester, Manchester water works.

II. Prior to transfer or exchange of parcels, the fish and game department, in conjunction with the office of state planning, shall find that the following criteria have been satisfied:

(a) The conservation values and the location of the replacement property is reasonably equivalent to the 7 acre parcel;

(b) An appraisal of the 7 acre parcel and the replacement parcels has been conducted and based on the unencumbered fair market value according to land conservation investment program guidelines, the city of Manchester, Manchester water works shall make a payment to the state of New Hampshire equal to the difference between the value of the 7 acre parcel of land being acquired by the city of Manchester, Manchester water works, and the value of the 2 parcels of land being transferred to the state of New Hampshire, provided, however, that if the 2 parcels of land have a value greater than the 7 acre parcel of land, no payment to the city of Manchester, Manchester water works shall be required. If the state of New Hampshire requires compensation for any difference in value between the parcels any such deposit by the city of Manchester, Manchester water works shall be made to the monitoring endowment established under RSA 162-C:8. The appraiser shall be selected by the state of New Hampshire, fish and game department, at the expense of the city of Manchester, Manchester water works;

(c) A conservation easement will be granted to the fish and game department on the non-built portion of the 7 acre parcel to protect wildlife habitat consistent with the intent of the original purchase by the land conservation investment program; and,

(d) A reverter clause shall be placed in the deed of the 7 acre parcel providing that the property revert back to the state of New Hampshire if the parcel is not used for public water supply purposes by the city of Manchester, Manchester water works.

(e) A reverter clause shall be placed in the deed of the 16.3 acre parcel of land and the 14.6 acre parcel of land providing that the property revert back to the city of Manchester, Manchester Water Works should the city of Manchester be unsuccessful in obtaining all state and federal permits for the development of an intake pumping station, water treatment plant, or associated infra-structure.

(f) In the event of reversion pursuant to subparagraphs (c) and (d) the state shall return any payment made by the city of Manchester under subparagraph (b).

4 Effective Date. This act shall take effect 60 days after its passage.

**MOTION TO TABLE**

Senator Barnes moved to have **SB 35** laid on the table.

**Adopted.**

Senator Foster Rule #42 on SB 35.

**LAI D ON THE TABLE**

**SB 35**, relative to the transfer and exchange of certain state-owned land for certain land owned by the Manchester water works.

**SB 87**, relative to setback requirements for septage, biosolids, and short paper fibers. Environment Committee. Ought to pass with amendment, Vote 5-0. Senator Johnson for the committee.

**Environment**

**March 19, 2003**

**2003-0886s**

**08/04**

**Amendment to SB 87**

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study setback requirements for septage, biosolids, and short paper fibers, and extending the temporary use of septage, biosolids, and short paper fiber by certain persons.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a committee to study setback requirements for land application of septage, biosolids, and short paper fiber.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Two members of the senate, appointed by the president of the senate.

(b) Two members of the house of representatives, appointed by the speaker of the house.

(c) One member of the rivers management advisory committee, appointed by such committee.

(d) Two members selected by the Connecticut River Joint Commissions, Upper Merrimack Local River Management Advisory Committee, Pemigewasset Local River Management Advisory Committee.

(e) One member from the New Hampshire Rivers Council, appointed by the council.

(f) One representative from the New Hampshire department of environmental services, rivers management and protection program, appointed by the commissioner of environmental services.

(g) One representative from the New Hampshire department of environmental services, sludge and septage program, appointed by the commissioner of environmental services.

(h) One representative from the New Hampshire department of agriculture, markets, and food, appointed by the commissioner of agriculture, markets, and food.

(i) One representative selected by the university of New Hampshire cooperative extension.

(j) One farmer selected by the New Hampshire Farm Bureau Federation.

(k) The executive director of the New Hampshire Farm Bureau Federation.

(l) One member from the New England Biosolids and Residuals Association (NEBRA), appointed by NEBRA.

(m) One member of a land application company, selected by NEBRA.

(n) One member of the Natural Resource Conservation Service, appointed by such organization.

II. Legislative members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall review literature and research on the effects of land application of septage, biosolids, and short paper fiber adjacent to surface waters, especially concerning surface run-off and water quality. The committee shall propose criteria for setbacks for land application of septage, biosolids, and short paper fiber from designated rivers in New Hampshire, or recommend specific studies to address gaps in existing research findings.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section.

5 Report. The committee shall submit an interim report on or before November 1, 2003 and a final report on or before July 1, 2004 on its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library.

6 Sludge, Biosolids, and Short Paper Fiber; Temporary Use: Amend 56:6, 1998 to read as follows:

56:6 Temporary Use Authorization. The septage and sludge land application restrictions contained in RSA 483:9, VI(c), RSA 483:9-a, VII(b), RSA 483:9-aa, VII(b), and RSA 483:9-b, VII(b) shall not apply until [~~5 years after the effective date of this act~~] **July 1, 2005** to any land upon which septage or sludge has been spread in accordance with all applicable rules adopted by the federal Environmental Protection Agency and the New Hampshire department of environmental services, during any portion of the 3-year period prior to January 1, 1998. In addition, there shall be no termination of this restriction exemption for qualifying land that is used for scientific research on septage or sludge. Any continued application of septage and sludge pursuant to this section shall comply with all applicable federal and state laws and any best management practices published by the university of New Hampshire cooperative extension.

7 Effective Date. This act shall take effect 60 days after its passage.

**2003-0886s**

### AMENDED ANALYSIS

This bill:

I. Establishes a committee to study setback requirements for septage, biosolids, and short paper fiber.

II. Extends the temporary use of septage, biosolids, and short paper fiber by certain persons.

SENATOR JOHNSON: Thank you Mr. President. I move that SB 87 ought to pass with amendment as recommended unanimously by the Environment Committee. Senate Bill 87 is a good compromise bill that will allow for further study to commence on the use of biosolids as fertilizer for farmland throughout New Hampshire. This is an issue that has often

generated much debate in the last five years as people on both sides of the issue spoke about the use of biosolids. This bill will allow the legislature to carefully continue reviewing the affects of usage to determine its benefits and weaknesses. In the meantime, those designated areas of the state that are currently using biosolids will be allowed to continue to do so. The committee feels that this is a good compromise that was made between the environmental people and the people who spread the biosolids. We ask the full Senate to follow our recommendation of ought to pass with amendment. Thank you Mr. President.

SENATOR BARNES: Thank you Mr. President. Senator Johnson, sitting on the committee with you, my understanding is that what we are doing here today protects some of our farmers out there in the state of New Hampshire who had a real concern about this piece of legislation with the amendment, is that correct?

SENATOR JOHNSON: That is correct. It will still be at the 250 feet. The original bill wanted to change that, but they will still be able to do what they are doing now.

SENATOR BARNES: So all of those farmers who have a problem with rivers going through their lands are not affected by what we are doing here, they are being helped out?

SENATOR JOHNSON: That is correct.

SENATOR BARNES: Thank you Senator.

SENATOR JOHNSON: Thank you for the question.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 88-FN**, relative to testing and monitoring requirements at soil manufacturing and reclamation sites. Environment Committee. Inexpedient to legislate, Vote 4-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you Mr. President. I move that SB 88 be voted inexpedient to legislate, based on our committee's recommendation. There is no longer any need for this bill to pass, based on the fact that their intent of the bill has already been resolved by those that it affects. Since there is no need for the legislature to get involved, I ask the Senate to vote this bill inexpedient to legislate. Thank you Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**SB 159-FN**, relative to milfoil and other exotic aquatic weeds. Environment Committee. Ought to pass with amendment, Vote 5-0. Senator Johnson for the committee.

**Environment**  
**March 20, 2003**  
**2003-0904s**  
**06/10**

**Amendment to SB 159-FN**

Amend the bill by replacing sections 1 and 2 with the following:

1 Registration Fees Reduced; Uses Changed. Amend RSA 270-E:5, I to read as follows:

I. The registration fees for commercial, private, and pleasure vessels, including rentals and airboats shall be as follows:

(a) Up to and including 16 feet \$[12] 8

(b) 16.1 feet to 21 feet \$[17] 13

(c) 21.1 feet to 30 feet \$[26] 22

(d) 30.1 feet to 45 feet \$[36] 32

(e) 45.1 feet and over \$[46] 42

2 Vessel Registration Fees; Fees Removed. RSA 270-E:5, II is repealed and reenacted to read as follows:

II. In addition to the fees required by paragraph I, there shall be the following registration fees:

(a) \$1.50 for each registration processed by an authorized agent of the department who is not an employee of the department. The fees collected under this subparagraph shall be collected and retained by the authorized agent as compensation for processing the registration.

(b) \$6 for each registration for tidal or coastal waters. \$2 of the surcharge collected under this subparagraph shall be paid into the harbor dredging and pier maintenance fund established under RSA 12-G:46. The remaining \$4 of the surcharge collected under this subparagraph shall be paid into the navigation safety fund established under RSA 270-E:6-a.

Amend RSA 270-F:1 as inserted by section 4 of the bill by replacing it with the following:

270-F:1 Statement of Purpose. It is the intent of the general court in this chapter to establish a water access permit system for all boats using the inland public waters of the state of New Hampshire. This chapter specifies which boats are subject to the permit fee, how these revenues are to be allocated and used, and how the water access permit decals are displayed.

Amend RSA 270-F:3, I as inserted by section 4 of the bill by replacing it with the following:

I. No person shall operate a vessel on any inland waters of the state unless the vessel displays a water access permit decal as required in this chapter or is exempt as provided in RSA 270-F:4.

Amend RSA 270-F:7 and 8 as inserted by section 4 of the bill by replacing them with the following:

270-F:7 Disposition of Revenues. All fines collected under this chapter and the amount of fees generated by RSA 270-F:5, V shall be deposited in the navigation safety fund established under RSA 270-E:6-a.

270-F:8 Display of Decal Required.

I. Every vessel requiring a water access permit in this state shall display the water access decal issued to the vessel permit process, unless the vessel is exempt under the provisions of RSA 270-F:9.

II. The owner shall attach the water access permit decal to each side of the forward half of the vessel above the waterline approximately three inches behind the registration decal.

III. This section shall be enforced only as a secondary action when the operator of a motorized vessel has been cited or charged with another violation.

IV. Any person who violates this section shall be issued a warning for a first offense and a violation for a second offense.

Amend paragraph II of section 14 of the bill by replacing it with the following:

II. The remainder of this act shall take effect January 1, 2004.



2003-0904s

## AMENDED ANALYSIS

This bill:

I. Reduces the boat registration fee.

II. Creates a water access permit fee for 4 years to fund programs relative to milfoil and other exotic aquatic weeds.

SENATOR JOHNSON: Thank you again Mr. President. This bill creates a water access permit system for all motorized vessels using the inland waters of New Hampshire. This permit system will allow the state to educate boaters on New Hampshire specific environmental and safety laws and determine the total number of boaters using the states' waters to aid in allocation of resources and generate revenues for funds that impact the management of our lakes, ponds and rivers. Creating a water access permit system provides a point of contact with out-of-state boaters. This will allow the distribution of information on gray water discharge, fuel spillage, the spread of invasive species and boaters guides describing the state's unique marine laws. New Hampshire currently registers approximately 100,000 boats each year, but there is no mechanism in place for tracking the numbers of out-of-state boats. Rough estimates of out-of-state boats range from 20,000 to 60,000 additional vessels on New Hampshire's waters. Creating a permit system allows the marine patrol and other agencies associated with lakes management, to determine that number and allocate resources accordingly. Applying to both in-state and out-of-state boats, SB 159 would require all motorized vessels operating on New Hampshire's inland public waters, to display a water access permit. The cost of the permit would be \$15 when purchased from the state. In-state, this fee is offset by a corresponding \$15 decrease in the New Hampshire registration fees, resulting in no net increase to in-state boaters. The monies will be distributed to funds that preserve the environmental integrity of our waters, expand public access to our waters, and maintain boater safety on our waters. I ask that you vote to pass SB 159. Thank you Mr. President.

SENATOR LARSEN: Senator Johnson, not having been in the Environment Committee when this was discussed in detail, I am just curious how an out-of-state person knows, and how do they know that they need to apply for this permit prior to entering New Hampshire's waters?

SENATOR JOHNSON: I would say that when they come into a marina for gas or whatever, they will be notified that they have to have an impact sticker. The Department of Safety, Marine Patrol will be patrolling the waters and looking to see what boats have these stickers. As you may know, the way that the law reads now is that we have reciprocity, which we have had for about 12 years for out-of-state boaters. By law, they are only supposed to be here for 30 days, but because of the situation of enforcement that we have, a lot of those boaters are continuing to stay here a full season. I would guess that probably most of them would be. That is how it would happen.

SENATOR LARSEN: For in-state applicants, can they get their permit at the same time that they register?

SENATOR JOHNSON: That is correct.

SENATOR LARSEN: So it is one step for a resident?

SENATOR JOHNSON: Yes.

SENATOR LARSEN: Okay. Thank you.

SENATOR JOHNSON: You are welcome.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 194**, establishing a committee to study certain issues relative to large groundwater withdrawals and their effect on Darrah Pond in Litchfield. Environment Committee. Inexpedient to legislate, Vote 4-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you Mr. President. I rise to offer the motion of inexpedient to legislate. There is already a piece of legislation that is going to take care of this. The prime sponsor of the bill came to the committee and agreed that we could make this bill inexpedient to legislate. The problem will be taken care of in another piece of legislation.

SENATOR MARTEL: Thank you Mr. President. I want to thank Senator Barnes for just identifying that the inexpedient to legislate motion was offered by myself with the chairman of the committee. The reason for that is because, my understanding and explanation was that there was comparable legislation that would work on this issue, and also, that the Department of Environmental Services already had this water and aquifer problem in their resolution of water problems in the southern end of New Hampshire. They have been looking at this problem for several years and it had come to my attention that they had the funds and they had the equipment and manpower to be able to resolve this issue. I gladly can assure the people of Litchfield that this being looked at and that the issue will be addressed in the right way. Thank you Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**SB 95-FN-L**, relative to the development of workforce housing within municipalities. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 5-0. Senator Cohen for the committee.

**Senate Executive Departments and Administration**

**March 20, 2003**

**2003-0935s**

**06/09**

### **Amendment to SB 95-FN-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; Workforce Housing. Amend RSA by inserting after chapter 674 the following new chapter:

#### **CHAPTER 674-A WORKFORCE HOUSING**

674-A:1 Definitions. In this chapter:

I. "Accessory apartment" means a separate dwelling unit designed for occupancy by no more than 2 people created largely within an existing single family home, which does not increase the overall size of the structure by more than 33 percent.

II. "Multi-family housing" means a building or structure containing 3 or more dwelling units, each designed for occupancy by an individual household.

III. "Municipal land use ordinances" means zoning, subdivision, site plan review, growth management, impact fee, and other such municipal ordinances and by-laws.

IV. "Realistic opportunities for the development of workforce housing" means opportunities to develop economically viable workforce housing within the framework of the municipality's land use ordinances. The collective impact of all such ordinances on a proposal for the development of workforce housing shall be considered in determining whether opportunities for the development of workforce housing are realistic.

V. "Reasonable opportunities for the development of workforce housing" means a sufficient amount of vacant, developable land on which workforce housing is permitted; or in municipalities which are largely built up, a sufficient area that is reasonably available for lawful development or redevelopment as workforce housing.

VI. "Workforce housing" means housing which is affordable to a household with income of 80 percent or less of the median income of the metropolitan area or county in which the housing is located, adjusted for the number of persons in the household, as published annually by the U. S. Department of Housing and Urban Development in the Federal Register. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than 2 bedrooms, shall not constitute workforce housing for the purposes of this chapter. For the purpose of this chapter, the following types of housing shall be considered workforce housing:

(a) Owner-occupied housing (including a condominium unit):

(1) Which is initially purchased by a family earning no more than 80 percent of the median income for a family of 4 for the county or metropolitan area, as published by the U.S. Department of Housing and Urban Development from time-to-time, where the total cost of mortgage principal and interest, property taxes, association fees, and homeowner's insurance does not exceed 33 percent of the maximum allowed income of the purchaser. Calculation of housing costs shall be based on current taxes, a 30-year fixed rate mortgage, a 5 percent down payment, and prevailing mortgage rates within the area.

(2) For which there are deed restrictions or some other legally enforceable mechanism requiring that the home be sold to a family earning no more than 80 percent of median income as set forth in subparagraph (1) for a period of not less than 15 years; or for which there is an equity-sharing arrangement by which a homeowner who sells the premises less than 15 years after purchasing it, contributes a share of the equity in said home to a non-profit workforce housing development organization, in accordance with written standards promulgated by the New Hampshire housing finance authority.

(b) Any housing subsidized by the state or federal government under any program to assist the creation of rental units in which all of the units are affordable to families earning 80 percent or less of median family income, as defined in the state or federal subsidy program. In order to qualify as workforce housing under this subparagraph, the developer must make a binding commitment that such units will remain affordable for not fewer than 30 years.

(c) Any subsidized or non-subsidized rental housing project in which the owner makes a legally-binding commitment for at least 20 years to maintain the rent in at least 25 percent of the dwelling units at no more than 30 percent of the income of a family earning 60 percent or less of the

median income adjusted for family size for the county or metropolitan area in which the dwelling unit is located, as determined annually by the U.S. Department of Housing and Urban Development.

(d) Manufactured housing, as defined in RSA 674:31, which is placed in a manufactured housing park, as defined in RSA 205-A:1, in which the park owner makes a legally binding commitment for at least 20 years, that for at least 25 percent of the dwelling units that the lot rent plus the mortgage principal and interest will not exceed 30 percent of the income of a family of 4 earning 80 percent of median family income for the county or metropolitan area in which the housing is located, as determined annually by the U.S. Department of Housing and Urban Development. Calculation of housing costs shall be based on a 20-year fixed rate mortgage, 20 percent down payment, and prevailing mortgage rates for manufactured housing within the area.

(e) Accessory apartments.

#### 674-A:2 Municipal Workforce Housing Obligation.

I. Municipal land use ordinances shall afford reasonable and realistic opportunities for the siting of workforce housing including multi-family workforce housing, and a municipality shall not exclude workforce housing completely from the municipality by regulation, zoning ordinance, or by any other police power. A municipality which adopts land use control measures shall allow, in its sole discretion, workforce housing to be located in most, but not necessarily all, land areas in districts zoned to permit residential uses or districts zoned to permit mixed uses within the municipality. In order to provide such realistic opportunities, lot size and overall density requirements for workforce housing shall be reasonable.

II. Notwithstanding the provisions of paragraph I, no municipality in which the equalized value per student is in the lowest 25 percent of the municipalities in the state shall be subject to an obligation to provide reasonable opportunities for the creation of workforce housing. The determination as to which municipalities are in the lowest 25 percent of the state in equalized value per student shall be made on an annual basis by the department of education.

#### 674-A:3 Appeal of Local Decisions.

I. Any person whose application to develop workforce housing, as defined in this chapter, is denied or is approved with conditions or restrictions which have a substantial adverse impact on the viability of the proposed workforce housing development may bring an action in the superior court to obtain permission to develop the proposed workforce housing. The petition to the court shall set forth how the denial is due to the municipality's failure to comply with the municipal workforce housing requirements of RSA 674-A:2 or how the conditions or restrictions of approval have a substantial adverse impact on the viability of the proposal.

II. Except as provided in this section, the provisions of RSA 677 shall apply to appeals filed under this chapter.

III. A hearing on the merits shall be held within 6 months of the date on which the action was filed unless counsel for the parties agree to a later date, or the court so orders for good cause.

IV.(a) The court shall grant judgment for the plaintiff and the municipality shall be ordered to issue the necessary permits to enable the plaintiff's project to proceed, notwithstanding the non-compliance of the proposed project with any municipal land use ordinance, if the plaintiff establishes by a preponderance of the evidence that:

(1) He or she has applied in good faith for approval of a proposal to create workforce housing, and that such application has been denied, or approved with conditions or restrictions that have a substantial adverse impact on the viability of the proposal;

(2) The land use regulations of the municipality fail to comply with the requirements of RSA 674-A:2;

(3) The proposed housing complies with the statewide building code, set forth in RSA 155-A:1, IV and RSA 155-A:2, II; and

(4) The proposed development would not increase the number of year-round dwelling units in the municipality by more than 40 in a municipality with fewer than 2,000 year-round dwelling units at the time the proposal is submitted to the planning board, or more than 2 percent in all other municipalities;

(5) The proposed development would be located in an area that permits residential uses; and

(6) The proposed development is not located on property that has been designated by the state or federal government or the municipality for historic preservation or environmental protection,

(b) Unless the municipality establishes that:

(1) The proposed project fails to comply with standards that are necessary to adequately provide for:

(A) water supply;

(B) sewage disposal and ground water protection;

(C) wetlands protection;

(D) roads and traffic safety;

(E) fire and life safety protection; and

(F) buffering of architecturally inconsistent development.

(2) The municipality's decision rejecting or modifying plaintiff's proposal is necessary to protect other substantial public interests in health or safety and that the public interests clearly outweigh the need for the workforce housing project;

674-A:4 Appeals. An appeal of superior court orders issued under RSA 674-A:3 shall be to the supreme court under the rules of said court.

3 Regional Planning Commissions; General Powers and Duties. RSA 36:47, II is repealed and reenacted to read as follows:

II. For the purpose of assisting municipalities in complying with RSA 674:2, III(I), each regional planning commission shall compile a regional housing needs assessment, which shall include an assessment of the regional need for housing for persons and families of all levels of income. The regional housing needs assessment shall be updated every 5 years and made available to all municipalities in the planning region. The regional housing needs assessment shall include an assessment of the regional need for workforce housing, as defined in RSA 674-A:1, VI, which shall be developed in accordance with a methodology developed by the office of state planning in consultation with the New Hampshire housing finance authority.

II-a. Each regional planning commission shall review the local land use regulations of any municipality in its region within 6 months of receiving a written request from the planning board, selectmen, or city council and make suggestions concerning the exclusionary effects of the ordinances and the ordinances' compliance with the municipality's obligation under RSA 674-A:2. The regional planning commissioner shall make recommendations concerning ways in which the ordinances could be changed to bring the municipality into compliance.

4 Innovative Land Use Controls; Inclusionary Zoning; Workforce Units Required. Amend RSA 674:21, IV(a) to read as follows:

(a) "Inclusionary zoning" means land use control regulations which provide a voluntary incentive or benefit to a property owner in order to induce the property owner to produce housing units which are affordable to persons or families of low and moderate income, ***or which require that workforce housing units be included in any housing development that contains more than a specified number of total dwelling units.*** Inclusionary zoning includes, but is not limited to, density bonuses, growth control exemptions, and a streamlined application process.

5 New Paragraph; Office of State Planning; Responsibilities for Assistance; Workforce Housing. Amend RSA 4-C:8 by inserting after paragraph IV the following new paragraph.

V. Assist municipalities by:

(a) Making available, upon request from a municipality, data produced or collected by state, local, or federal government agencies in determining its need for workforce housing.

(b) Developing, in conjunction with the New Hampshire housing finance authority, a recommended uniform methodology for the development of the regional housing needs assessment required by RSA 36:47, II.

(c) Providing guidelines for the development of municipal master plans that promote the development of workforce housing.

6 Allocation of Financial Grants. For 3 years, beginning July 1, 2003, priority for financial grants to regional planning commissions made pursuant to RSA 4-C:8, I, shall be given to grant requests which are for the purpose of enhancing a regional planning commission's ability to provide technical assistance to municipalities in meeting their legal obligations to provide realistic and reasonable opportunities for the development of workforce housing.

7 Effective Date.

I. Section 2 of this act shall take effect June 1, 2004.

II. The remainder of this act shall take effect upon its passage.

SENATOR COHEN: Thank you Mr. President. The committee unanimously moves SB 95 ought to pass with amendment. The bill before us is the culmination of much work on the part of municipalities, developers, legislators and many others to meet New Hampshire's housing challenges. Senate Bill 95 as amended, replaces the entire bill and represents a carefully crafted compromise between the New Hampshire Municipal Association, housing advocates and developers. The bill defines workforce housing as housing which affordably serves households at 80 percent or less of median income and establishes a slightly expedited judicial appeals process when a proposal to create workforce housing is denied. Even then, the burden is on the developer to prove that the project challenges the town's public interests or that the municipality's land use ordinances do not afford for the creation of workforce housing. The bill contains no quotas or specific results, just realistic opportunities. More specifically, SB 95 clarifies the obligation of cities and towns to provide reasonable opportunities for workforce housing as established by the 1991 New Hampshire Supreme Court decision in *Britton v Chester*. Further, the bill exempts the poorest 25 percent of municipalities from any further obligation and removes all monetary penalties against municipalities which fail to comply. Perhaps most importantly, the bill helps the many municipalities that are providing more than their fair share of

workforce housing by encouraging those who have not, to help meet this tremendous demand. The committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**Senator Morse is in opposition to SB 95.**

**SB 97**, limiting the liability of firefighters working for certain private firefighting units. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 5-0. Senator Kenney for the committee.

**Senate Executive Departments and Administration**

**March 20, 2003**

**2003-0921s**

**06/01**

**Amendment to SB 97**

Amend RSA 154:1-d, II as inserted by section 1 of the bill by replacing it with the following:

II. Any firefighter, paid or volunteer, who is acting in an official capacity under the direction or supervision of the elected or appointed fire chief, or designee, of a municipal fire department organized in accordance with RSA 154:1, *or who is a member of a not for profit private firefighting unit which has contracted with a municipality or other political subdivision and is organized in accordance with RSA 154:1-c*, or who is participating in a fire department activity sanctioned by the local governing body or its designee, shall be an agent of the municipality, enjoying the same privileges and immunities as the municipality or employees of the municipality. Such privileges and immunities include, but are not limited to, indemnification for civil rights damages to the extent set forth in RSA 31:106, and indemnification for any other accidental damages to the extent set forth in RSA 31:105, if the municipality has adopted that section.

SENATOR KENNEY: Thank you Mr. President. I move SB 97 ought to pass with amendment. New Hampshire's voluntary firefighters who risk their lives for no compensation on every call are often not protected from liability while acting in their official capacity as firefighters simply because the department is organized on a volunteer basis. Senate Bill 97 would provide volunteer firefighters who have contracted with a municipality with the same immunity from liability that a municipal department might receive. The bill was amended to clarify that liability coverage and SB 97 addresses only volunteer firefighters. The committee unanimously voted ought to pass with amendment and I urge the Senate to do the same. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 101-FN**, relative to unemployment compensation. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 5-0. Senator Kenney for the committee.

**Senate Executive Departments and Administration**  
**March 20, 2003**  
**2003-0922s**  
**08/04**

**Amendment to SB 101-FN**

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Unemployment Compensation; Employer Defined. Amend RSA 282-A:8 by inserting after paragraph VII the following new paragraph:

VIII. An Indian tribe as defined by 26 U.S.C. section 3306(u) of the Federal Unemployment Tax Act for which services in employment are performed within this state unless such services are otherwise excluded from employment under 26 U.S.C. section 3306 (c) of the Federal Unemployment Tax Act or under RSA 282-A:9. Indian tribes shall also include wholly owned subdivisions, subsidiaries, or business enterprises of Indian tribes.

2 Unemployment Compensation. Amend RSA 282-A:9, IV(s)(1)(B) to read as follows:

(B) Is engaged in the trade or business of selling, or soliciting the sale of, consumer products in the home or otherwise than in a permanent retail establishment; **or**

3 New Subparagraph; Unemployment Compensation. Amend RSA 282-A:9, IV(s)(1) by inserting after subparagraph (B) the following new paragraph:

(C) Is engaged in the trade or business of the delivering or distribution of newspapers or shopping news, including any services directly related to such trade or business;

4 Unemployment Compensation. Amend RSA 282-A:31, III to read as follows:

III. Subparagraph I(c) shall be waived for any week with respect to any individual who is otherwise entitled to unemployment compensation benefits and is selected by the department of employment security and enrolled in a vocational training program ~~[under the auspices of the New Hampshire department of education]~~ **approved by the commissioner of the department of employment security** and is as to such week in good standing in the training program, and has not failed without good cause to attend all scheduled sessions. Remuneration for services in connection with the training program paid to any such individual shall be wages for the purposes of RSA 282-A:14.

5 New Paragraph; Benefit Eligibility Conditions. Amend RSA 282-A:31 by inserting after paragraph III the following new paragraph:

IV. Subparagraphs II(b) and II(c) shall apply only to services in the employ of the state or any political subdivision thereof, to Indian tribes, and to organizations defined in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code.

6 New Paragraph; Unemployment Compensation. Amend RSA 282-A:32 by inserting after paragraph III the following new paragraph:

IV. For any week during which the individual resides other than in New Hampshire, another state, the District of Columbia, Puerto Rico, the Virgin Islands or a contiguous country with which the United States has an agreement with respect to unemployment compensation.

7 Unemployment Compensation. Amend RSA 282-A:36 to read as follows:

282-A:36 Labor Dispute. ~~[An individual]~~ **A person** shall be disqualified for benefits for any week with respect to which the commissioner



finds that his *or her* total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he *or she* is or was last employed; provided that this section shall not apply if it is shown to the satisfaction of the commissioner that:

I.(a) [He] *The person* is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(b) [He] *The person* does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute; provided that, if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises; or

II. [He] *The person* has become unemployed and entitled to unemployment compensation before the commencement of the labor dispute and his connection with the employer has been totally severed, including the absence of recall rights, seniority rights and other fringe benefits and indicia of employment; or

II-a. The stoppage of work was due solely to a lockout or the failure of the employer to live up to the provision of any agreement or contract of employment entered into between the employer and his employees; or

III. The stoppage of work has continued for a period of 2 weeks after the termination of the labor dispute; or

IV. [He] *The person* has, since becoming unemployed for the reasons set forth in the introductory paragraph worked in 5 or more [~~consecutive~~] weeks in employment [~~for an employer~~] *as defined in RSA 282-A:9, except RSA 282-A:9, IV(f), or wages earned in a like manner in another state*, earning in each week an amount at least equal to [his] *such person's* maximum benefit rate plus 20 percent thereof, and then becomes unemployed from said employer due to a lack of work.

8 Unemployment Compensation. Amend RSA 282-A:58 to read as follows:

282-A:58 Decision. In every appeal, except those withdrawn, the chairman shall prepare a written decision which shall be sent by certified mail, return receipt requested, *or first class mail, whichever the commissioner determines to be most appropriate*, to each interested party at the last address of each according to the records of the department of employment security. The decision, except one on an appeal dismissed for lack of prosecution or defaulted for failure to attend, among other necessary things as determined by the commissioner, shall: set forth all the material findings and specific provisions of law necessary to support the conclusions; identify the interested parties and the account, whether fund or employer, to which benefits will be charged, if allowed; identify the week or period during which benefits are denied; identify the first week and subsequent period with respect to which benefits will be paid, if allowed; determine all things necessary to finally dispose of the case; and identify the members of the tribunal.

9 Unemployment Compensation. Amend RSA 282-A:69, II to read as follows:

II. Notwithstanding this section, any organization or group of organizations, described in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code *or Indian tribe as defined in RSA 282-A:8, VIII*, which becomes an employer under this act, may

elect to change its status either to reimburse in the manner provided for the state in RSA 282-A:70 or to pay contributions as hereinabove provided. The change in status shall be irrevocable for 3 calendar years. Thereafter the employer may elect to change its status no later than January 1, for any year, but such new change in status shall be irrevocable for 3 calendar years. Any 2 or more of such employers or any 2 or more cities, towns, counties or other political subdivisions of this state may elect, for a period of not less than 3 years, to pool their separate accounts under such rules as may be adopted by the commissioner, including appropriate bonding and fiscal safeguard requirements, and each unit shall be jointly and severally liable for payments due.

10 Unemployment Compensation. Amend RSA 282-A:152, I to read as follows:

282-A:152 Collection of State Contributions.

I. Whenever used in this subdivision, unless the context shall otherwise require, or unless otherwise specifically provided, the word "contribution" shall include not only the principal of any contribution but also all interest, penalties, fees and other charges added thereto by law; and the term "serving officer" shall include any sheriff, deputy sheriff, constable or other officer authorized to serve any civil process. ***Delivery of written notice by an authorized representative of the commissioner shall be deemed proper service of process.***

11 Unemployment Compensation. Amend RSA 282-A:155 to read as follows:

282-A:155 Interstate Collections. The courts of this state shall~~[-in the manner provided in RSA 282-A:143 and 153,]~~ entertain actions ***in the name of the commissioner*** to collect ***benefits***, contributions or interest thereon for which liability has accrued under the employment security law of any other state or of the federal government. ***The commissioner shall have the authority to collect any such debt by civil action in any manner provided for the collection of contributions in RSA 282-A:141-156.***

12 Agreement Authorized. Amend RSA 282-A:178, I to read as follows:

I. The department of employment security, through its commissioner, is hereby authorized to enter into an agreement, effective April 3, 1975, with the secretary of labor of the United States to become an agent of the United States in order to carry out the provisions of Chapter 2 of Title II of the Trade Act of 1974, ***as amended*** (P.L. 93-618, ***as amended***), and to perform such acts and do all those things necessary to fully carry out such agreement.

13 Agreement Authorized. Amend the introductory paragraph of RSA 282-A:178, II(a) to read as follows:

(a) Solely for the purposes of carrying out the agreement authorized in ~~[paragraph]~~ ***paragraphs I and I-a***, and notwithstanding other provisions of this chapter to the contrary, the provisions of this section permit:

14 New Paragraph; Agreement Authorized. Amend RSA 282-A:178 by inserting after paragraph I the following new paragraph:

I-a. The department of employment security, through its commissioner, is hereby authorized to enter into an agreement, effective November 4, 2002, with the Secretary of Labor of the United States to become an agent of the United States in order to carry out the provisions of the Trade Adjustment Assistance Reform Act of 2002, as amended, (P.L. 107-210, as amended), and to perform such acts and do all those things necessary to fully carry out such agreement.

15 New Paragraph; Exclusions. Amend RSA 282-A:9 by inserting after paragraph VI the following new paragraph:

VII. For the purposes of paragraph I, the exclusions under paragraphs IV (o)(2), IV (o)(5), and IV (p)(4) shall apply to Indian tribes.

16 New Paragraph; Payments in Lieu of Contributions. Amend RSA 282-A:69 by inserting after paragraph IV the following new paragraph:

V. The following provisions shall apply to Indian tribes electing to make payments in lieu of contributions:

(a) At the discretion of the commissioner, any Indian tribe that elects to become liable for payments in lieu of contributions shall be required within 30 days after the effective date of its election, to:

(1) execute and file with the commissioner a surety bond approved by the commissioner; or

(2) deposit with the commissioner money or securities on the same basis as other employers with the same election option.

(b) Failure of the Indian tribe to make required payments, including assessments of interest and penalty, within 90 days of receipt of the bill will cause the Indian tribe to lose the option to make payments in lieu of contributions for the following tax year unless payment in full is received before the contribution rate for the next tax year is computed.

(c) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment shall have such option reinstated if, after a period of one year, all contributions have been made timely, provided no contributions, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.

(d) Failure of the Indian tribe to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the commissioner have been exhausted, will cause services performed for such tribe to not be treated as employment for purposes of this section.

(e) The commissioner may determine that any Indian tribe that loses coverage under subparagraph (d) may have services performed for such tribe again included as employment for purposes of RSA 282-A:9 if all contributions, payments in lieu of contributions, penalties and interest have been paid.

(f) The commissioner shall notify the United States Internal Revenue Service and the United States Department of Labor of any termination or reinstatement of coverage made under subparagraphs (d) and (e).

(g) Notices of payment and reporting delinquency to Indian tribes shall include information that failure to make full payment within the prescribed time frame:

(1) shall cause the Indian tribe to be liable for federal unemployment tax;

(2) shall cause the Indian tribe to lose the option to make payments in lieu of contributions; and

(3) could cause the Indian tribe to be excepted from the definition of employer, as provided in RSA 282-A:8, and services in the employ of the Indian tribe to be excepted from employment.

(h) Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe.

17 Waiver of Costs. Amend RSA 282-A:29 to read as follows:

282-A:29 Adjustment of Overpaid Benefit Account by Compromise.

I. The commissioner may, with the approval of the attorney general, effect by written stipulation such settlement of any overpaid benefit ac-

count due under the provisions of this chapter as he *or she* may deem to be for the best interests of the state; and the payment of the sum so agreed upon shall be a full satisfaction of such overpaid benefit account.

***II. Payment by a debtor of interest, penalties, fees, and legal costs due under the provisions of this chapter totaling \$50 or less may be waived by the commissioner of the department of employment security as he or she may deem to be for the best interests of the state.***

18 Waiver of Costs. Amend RSA 282-A:148 to read as follows:

282-A:148 Adjustment of Contribution by Compromise.

***I.*** The commissioner of the department of employment security may, with the approval of the attorney general, effect by written stipulation such settlement of the contribution or interest due under the provisions of this chapter as he *or she* may deem to be for the best interests of the state, and the payment of the sum so agreed upon shall be a full satisfaction of such contribution and interest.

***II. Payment by a debtor of interest, penalties, fees, and legal costs due under the provisions of this chapter totaling \$50 or less may be waived by the commissioner of the department of employment security as he or she may deem to be for the best interests of the state.***

19 Effective Date.

I. Section 5 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

**2003-0922s**

#### AMENDED ANALYSIS

This bill adds Indian tribes to the definition of employer for the purposes of unemployment compensation and makes various other changes.

This bill is a request from the department of employment security.

SENATOR KENNEY: Thank you Mr. President. I move SB 101 ought to pass with amendment. Much of what the Department of Employment Security does is in response to federal requirements and this bill is by no means an exception. Although New Hampshire does not have any Indian Tribes within state boundaries, the United States Department of Labor has recommended that New Hampshire law be amended so that it conforms to federal laws requiring that tribes be treated similarly to state and local governments. The bill also clarifies how claims for unemployment compensation are made from outside the United States and includes a number of housecleaning measures such as the use of first class mail during the appeals process and allowing the commissioner to designate "serving officers" for the purpose of serving liens and tax warrants. The committee amended the bill by restoring the ability of school bus driver's who work for private companies to receive unemployment benefits when school is not in session. The benefit was removed following a New Hampshire Supreme Court decision. Private school bus transportation companies are already having difficulty attracting and retaining quality drivers with the benefits intact but without them it would be even more so and could indirectly compromise the safety of the students who ride the bus. The committee unanimously voted ought to pass with amendment and I urge the Senate to do the same. Thank you Mr. President.

SENATOR D'ALLESANDRO: Senator Kenney, one of the provisions of the bill is the salary of the Deputy Commissioner. Is that in line with the unclassified salary schedule that we put into place in the last biennium?

SENATOR KENNEY: To be honest, Senator D'Allesandro, I do not have the answer to that because I didn't track that position in the last bien-nium. I will try to get an answer to you by the time the day is out.

SENATOR D'ALLESANDRO: Thank you.

**Recess.**

**Out of recess.**

### **MOTION TO TABLE**

Senator Clegg moved to have **SB 101-FN** laid on the table.

**Adopted.**

### **LAIID ON THE TABLE**

**SB 101-FN**, relative to unemployment compensation.

**SB 130-FN-L**, relative to county departments of corrections. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 5-0. Senator Peterson for the committee.

### **Senate Executive Departments and Administration**

**March 20, 2003**

**2003-0934s**

**04/09**

### **Amendment to SB 130-FN-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 County Departments of Corrections; Superintendent Duties. Amend RSA 30-B:4 to read as follows:

30-B:4 Superintendent; General Duties and Powers. The superintendent of the county department of corrections, as an agent of the county commissioners, shall be vested with all of the powers and subject to all the duties and limitations provided in this and other chapters relative to the management of county correctional facilities. These shall include, but are not limited to, the following:

I. The superintendent shall report to the board of county commissioners of ~~his~~ *the* county and be answerable to it for the efficient and effective operation of county correctional facilities.

I-a. The superintendent shall manage all operations of the department and administer and enforce the laws with which the department is charged.

*I-b. The superintendent shall have every power enumerated in the laws, whether granted to the superintendent, the department, or any administrative unit of the department. In accordance with these provisions, the superintendent shall:*

*(a) Annually compile a budget which reflects all fiscal matters related to the operation of the department and each program and activity of the department.*

*(b) Exercise general supervisory and authority over all department employees, in accordance with applicable personnel statutes and rules.*

*I-c. The superintendent shall adopt such reasonable policies and procedures necessary to carry out the duties of the department consistent with this chapter.*

*I-d. The superintendent shall not accept, on behalf of the department, any grants of money without first obtaining the express consent of the board of commissioners.*

II. The superintendent shall, under the supervision of the county commissioners, have custody of all the inmates confined to those facilities.

III.(a) The superintendent shall, in person or by agent, receive all persons sent by lawful authority to the county department of corrections and retain them until they are released by process appropriate under law, except as provided in subparagraph (b).

(b) Whenever a person in the custody of the superintendent under subparagraph (a) is transported to a state court, the sheriff through the sheriff's deputies and bailiffs shall be responsible for custody and control of such person during the time period such person is in the courthouse.

IV. The superintendent shall monthly present to the presiding or designated justice and the clerk of the superior court in ~~his~~ **the** county a certified list of all pretrial prisoners who are or have been in ~~his~~ custody with the times and causes of their confinements or discharges.

V. The superintendent shall provide each prisoner in his **or her** custody with necessary sustenance, clothing, bedding, ~~and~~ shelter, **and medical care**.

VI. The superintendent of the county department of corrections shall cause to be kept a correct and itemized account of each employed prisoner's earnings and debits made and incurred on their account, and shall retain the balance of those earnings in escrow until the prisoner is discharged from the county department of corrections, whereupon the superintendent shall cause the prisoner to be paid the amount due and take a receipt.

2 County Departments of Corrections; Use of Force. Amend RSA 30-B:11 to read as follows:

30-B:11 Use of Force. Law enforcement officers ~~and guards~~ in county correctional facilities may use physical force as provided in RSA 627:5.

3 County Departments of Corrections; Commitment of Offenders. RSA 30-B:15 is repealed and reenacted to read as follows:

30-B:15 Place of Commitment. Any person committed to a county correctional facility for any offense shall be committed to a county correctional facility in the county in which the offense is committed.

4 County Departments of Corrections; Employment of Offenders. Amend RSA 30-B:18 to read as follows:

30-B:18 Prisoners Awaiting Trial. Any prisoner confined to a county correctional facility while awaiting trial in the superior court or for any other cause, who is not likely to flee or commit an act of violence, and who wishes to work, may do so voluntarily upon approval of the ~~county commissioners~~ **superintendent**, subject to rules and regulations of the ~~[commissioners and the superintendent of the]~~ correctional facility.

5 Probationers and Parolees; Detention of Violators. Amend RSA 504-A:5 to read as follows:

504-A:5 Detention of Violators. Any probationer or parolee who is arrested under the authority of RSA 504-A:4 or RSA 651-A:25 shall be detained at the county jail closest to the location where he was arrested or any other suitable confinement facility in reasonable proximity to the location where he **or she** was arrested. Such probationer or parolee shall be detained there pending a preliminary hearing **which shall be held within 72 hours from the time of arrest, excluding Saturdays, Sundays, and holidays**, or, if supervised pursuant to RSA 651-A:25, shall be detained pending a hearing, including a final revocation hearing, or transfer to the sending state. No ~~sheriff~~ or county correctional ~~administrator~~ **superintendent** shall refuse to accept a probationer or parolee committed to his **or her** facility for detention by or under the authority of a probation or parole officer.

6 Enforcement of Fines; Place of Committal. Amend RSA 618:6 to read as follows:

618:6 Place of Committal. Any person sentenced to pay a fine shall be ordered to be imprisoned until sentence is performed, or he *or she* is otherwise legally discharged, in ~~[any]~~ **the** county correctional facility ~~[at the discretion of the court]~~ **in which the crime was committed**. This section shall not be construed as authorizing the confinement of any juvenile under the age of 17 years in a county correctional facility for the nonpayment of a fine.

7 Enforcement of Fines; Balance of Payment. Amend RSA 618:8-10 to read as follows:

618:8 At End of Term, or on Payment of Balance. Any person sentenced conditionally to pay a fine or to be imprisoned for a term shall be discharged at the expiration of the term, and may be discharged at any time on payment of the balance of the fine, after deducting ~~[\$20]~~ **\$50** for each day ~~[he]~~ **such person** has been imprisoned under the sentence.

618:9 Committal for Nonpayment; Term. Whenever a person is committed to a county correctional facility in default of payment of a fine imposed by a justice of a municipal court or a district court, he *or she* shall be discharged from custody by the superintendent thereof at the expiration of a number of days after the date of his *or her* commitment equal to one day for each ~~[\$20]~~ **\$50** of the fine so imposed. The superintendent shall keep a record of all discharges made under the provisions of this section.

618:10 Petition for Discharge. Whenever a person under conviction for a criminal offense and confined in a county correctional facility is unable to pay the fine, the superior court, upon petition of the prisoner or the ~~[county commissioners]~~ **superintendent** and satisfactory proof of such inability, may order the prisoner to be discharged upon such terms as they may think proper.

8 Temporary Removal of Prisoners; Illness or Emergency. Amend RSA 623:1, I-II to read as follows:

623:1 Illness or Emergency.

I. Any person confined in a county department of corrections facility, state prison or other place of detention may, under necessary precautions, be taken by some regular or specially authorized officer from such place of detention to a medical facility for the purpose of receiving medical examination or treatment upon recommendation of a physician, **a physician's assistant**, or an advanced registered nurse practitioner (ARNP) and upon approval of the ~~[administrator]~~ **superintendent** of the institution in which the person is confined. In the case of a transfer **of a pretrial prisoner** for medical purposes for a period in excess of ~~[24 hours]~~ **10 days**, the justice of the court who originally ordered the prisoner's commitment shall be given written notice of the transfer within ~~[5]~~ **15** days of said transfer, and shall be given notice upon the return of the prisoner within ~~[5]~~ **15** days of the prisoner's return. The provisions of RSA 402:79 shall apply to payments for medical care provided pursuant to this section.

II. Any person confined in a county department of corrections facility, state prison or other place of detention may be temporarily taken from his place of confinement because of the imminently approaching death or funeral of a member of his immediate family or for other imperative and extraordinary purpose, including treatment, counseling or rehabilitation programs, for a period not exceeding ~~[48]~~ **72** hours without approval by a justice of the superior court.

9 Repeal. The following are repealed:

I. RSA 30-B:14, relative to superintendent's bills.

II. RSA 30-B:24, relative to transfer of female prisoners.

III. RSA 651:23, relative to change of place of confinement.

10 Effective Date. This act shall take effect January 1, 2004.

SENATOR PETERSON: Thank you Mr. President. I move SB 130 ought to pass with amendment. Senate Bill 130 as introduced included numerous changes to the statutes governing the administration of the county correctional facilities, some of which were substantive changes and some of which were simply housecleaning measures. County and court officials who had concerns about transferring decisionmaking authority that was traditionally theirs to make, to the superintendents of the correctional facilities, sat down with the superintendents to resolve the issues. They came close, but could not bridge the gap. In order to move the bill forward, the committee removed the portions of the bill that the parties could not resolve and kept the ones where there was agreement. The parties did agree on removing antiquated language and clarifying the powers and duties of the superintendents. The committee unanimously recommends ought to pass with amendment and asks the Senate to do so as well. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 227**, relative to the board of occupational therapy, the board of respiratory care practice, the board of speech-language therapists, the board of athletic trainers practice, the board of physical therapy practice, and the board of directors of the office of licensed allied health professionals. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 5-0. Senator Peterson for the committee.

**Senate Executive Departments and Administration**

**March 20, 2003**

**2003-0923s**

**08/04**

#### **Amendment to SB 227**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to the board of occupational therapy, the board of respiratory care practice, the board of speech-language therapists, the board of athletic trainers practice, the board of physical therapy practice, and the board of directors of the office of licensed allied health professionals, and relative to the board of podiatry.

Amend RSA 326-C:8 as inserted by section 1 of the bill by replacing it with the following:

326-C:8 Physical Agent Modalities; Certificates.

I. Licensed occupational therapists and licensed occupational therapy assistants are required to hold a certificate issued by the board authorizing their use of specified physical agent modalities.

II. Licensees who have been using specified physical agent modalities for 3 consecutive years and who have been educated or trained on the job in their use may continue their use without holding authorizing



certificates, but such licensees shall meet the eligibility and application requirements for authorizing certificates no later than 6 months after the adoption of rules establishing such requirements.

III. The board is authorized to issue certificates authorizing the use of specified physical agent modalities to eligible licensed occupational therapists and licensed occupational therapy assistants. Such certificates are not required to be renewed.

IV. The board may suspend a certificate authorizing the use of specified physical agent modalities as one of the conditions of a conditional license issued pursuant to this chapter and RSA 328-F. Such a certificate shall be suspended or revoked when the underlying license is suspended or revoked.

Amend section 2 of the bill by replacing the bill section heading with the following:

2 Respiratory Care Practice. RSA 326-E is repealed and reenacted to read as follows:

Amend RSA 326-E:1 as inserted by section 2 of the bill by replacing it with the following:

326-E:1 Definitions. As used in this chapter and RSA 328-F:

I. "Board" means the governing board of respiratory care practitioners established under RSA 328-F.

II. "Certified pulmonary function technician" or "CPFT" means a person having successfully completed and achieved a passing score on the entry level examination in pulmonary function and maintained the related credential issued by the National Board for Respiratory Care, Inc.

III. "Consultation by telecommunication" means that a respiratory care practitioner renders professional or expert opinion or advice via telecommunications or computer technology from another location. It includes the transfer of data or exchange of educational or related information by any means of audio, video, or data communications.

IV. "National Board for Respiratory Care, Inc." or "NBRC" means the national voluntary health certifying board that evaluates the professional competence of respiratory therapists and pulmonary function technicians.

V. "Nurse practitioner" means a person licensed to practice as an advanced registered nurse practitioner in this state pursuant to RSA 326-B.

VI. "Physician" means a person licensed to practice medicine in this state pursuant to RSA 329.

VII. "Physician assistant" means a person licensed to practice as a physician's assistant pursuant to RSA 328-D.

VIII. "Registered polysomnographic technologist" or "RPSGT" means a person having successfully completed and achieved a passing score on the comprehensive registry examination for polysomnographic technologists administered by the Board of Registered Polysomnographic Technologists.

IX. "Registered pulmonary function technologist" or "RPFT" means a person having successfully completed and achieved a passing score on the advanced level examination in pulmonary function and maintained the related credential issued by the National Board for Respiratory Care, Inc.

X. "Respiratory care" means the treatment, management, diagnostic testing and evaluation of responses to respiratory or medical treatment and care of individuals or groups of individuals either having deficiencies or abnormalities of the cardiopulmonary system or requiring support of the cardiopulmonary system. Respiratory care is given in accordance with the prescription of a physician, nurse practitioner or

physician's assistant. Respiratory care includes the implementation of respiratory care strategies and modalities, and the administration of pharmacological, diagnostic, and therapeutic agents necessary to implement a treatment, disease or injury prevention, rehabilitative or diagnostic regimen. Respiratory care includes, but is not limited to: initiating emergency procedures; providing health counseling and teaching; assembly, repair, testing and maintenance of respiratory equipment; and those respiratory care activities that require a substantial amount of scientific knowledge or technical skill.

XI. "Respiratory care educational program" means a program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation in collaboration with the Joint Review Committee for Respiratory Therapy Education, by the Committee on Accreditation for Respiratory Care, or by the Commission on Accreditation of Allied Health Education Programs, or their successor organizations.

XII. "Respiratory care practitioner" means a person who is:

(a) Licensed in the practice or performance of respiratory care who has the knowledge and skill necessary to administer the functions defined in paragraph X of this section.

(b) Capable of serving as a resource in relation to the clinical and technical aspects of respiratory care as to the safe and effective methods for administering respiratory care modalities.

(c) Able to function in situations of unsupervised patient contact requiring individual judgment.

(d) Capable of supervising, directing, and teaching less skilled personnel in the provision of respiratory care services.

Amend the introductory paragraph of RSA 326-E:2 as inserted by section 2 of the bill by replacing it with the following:

326-E:2 Rulemaking. The board shall adopt rules pursuant to RSA 541-A:

Amend RSA 326-E:4, IV as inserted by section 2 of the bill by replacing it with the following:

IV. A person or business entity, its employees, agents, or representatives shall not use in conjunction with that person's name or the activity of the business the words "respiratory care", "respiratory therapy", "respiratory care practitioner", "respiratory therapist", the letters "R.T." or "R.C.P.", or any other words, abbreviations, or insignia indicating or implying directly or indirectly that respiratory care is provided or supplied, including the billing of services labeled as respiratory care, unless such services are provided by or under the direction of a respiratory care practitioner licensed under this chapter.

Amend RSA 326-E:6, I as inserted by section 2 of the bill by inserting after subparagraph (h) the following new subparagraph:

(i) A polysomnography trainee from fulfilling training and experiential clinical requirements in pursuit of a degree or as set forth by the Board of Polysomnographic Technologists for the purpose of achieving eligibility for the RPSGT examination, while working under the direct supervision of a physician, a respiratory care practitioner, polysomnography technician or RPSGT; or a polysomnography technician from fulfilling training and experiential requirements in pursuit of a degree or as set forth by the Board of Polysomnographic Technologists for the purpose of achieving eligibility for the RPSGT examination, while working under the general supervision of a physician, respiratory care practitioner, or RPSGT.

Amend RSA 326-E:7, I(a) as inserted by section 2 of the bill by replacing it with the following:

(a) A list of licensees and conditional license holders that includes place of practice, license number, date of license or date of conditional license expiration, and status of license.

Amend RSA 326-E:7, IV(b) and (c) as inserted by section 2 of the bill by replacing it with the following:

(b) Confidential communications between licensees and their patients are placed on the same basis as those provided by law between physician and patient, and, except as otherwise provided by law, no licensee shall be required to disclose such privileged communications. Confidential communications between a patient of a licensee and any person working under the supervision of such licensee to provide services that are customary and necessary for diagnosis and treatment are privileged to the same extent as would be the same communications between the supervising licensee and the patient.

(c) The privilege established in subparagraph (b) shall not apply to investigations and disciplinary proceedings conducted by any agency regulating health professions in this state.

Amend RSA 326-E:8, I as inserted by section 2 of the bill by replacing it with the following:

I. The respiratory care practitioner is responsible for managing all aspects of the respiratory care of each patient under the orders of a physician, physician's assistant, or nurse practitioner. The respiratory care practitioner shall provide:

(a) Written documentation of therapeutic effectiveness of care provided.

(b) Periodic written evaluation of each patient.

(c) Written documentation of diagnostic studies performed.

Amend the introductory paragraph of RSA 326-E:10 as inserted by section 2 of the bill by replacing it with the following:

326-E:10 Eligibility for License Renewal. Licensees are eligible for renewal of their licenses if the licensees:

Amend RSA 326-F:2, I as inserted by section 3 of the bill by replacing it with the following:

I. This chapter and RSA 328-F shall not apply to speech-language specialists who are certified under rules adopted by the board of education pursuant to RSA 21-N:9, II(s), unless they are also licensed under this chapter.

Amend RSA 326-F:4, III as inserted by section 3 of the bill by replacing it with the following:

III. A holder of a provisional license practicing speech-language pathology full time shall complete 9 months of postgraduate professional experience in accordance with rules adopted by the board.

Amend the introductory paragraph of RSA 326-F:5 as inserted by section 3 of the bill by replacing it with the following:

326-F:5 Rulemaking. The board shall adopt rules, pursuant to RSA 541-A, relative to:

Amend RSA 326-F:5, I and II as inserted by section 3 of the bill by replacing it with the following:

I. Eligibility requirements for provisional licenses.

II. Application procedures for provisional licenses.

Amend RSA 326-F:8, II as inserted by section 3 of the bill by replacing it with the following:

II. No person shall represent himself or herself or the services offered by using the letters "SLP" or the words "speech-language pathologist", "speech-language pathology", "speech pathologist", "speech pathology", "speech therapist", "speech therapy", "speech correctionist", "speech correction", "speech clinician", "language pathologist", "language pathology", "aphasiologist", "voice pathologist", "voice pathology", "language therapist", "language therapy", "communication disorders" or any similar words if the intent of such use is to imply that the person is licensed, unless licensed under this chapter.

Amend RSA 326-G:1, II and III as inserted by section 4 of the bill by replacing it with the following:

II. "Athletic trainer" means a person licensed under this chapter to practice athletic training.

III. "Athletic training" means the practice, with respect to injuries or conditions incurred by participants in organized or recreational sports, of:

- (a) Prevention;
- (b) Assessment and evaluation;
- (c) Acute care, management, treatment and disposition;
- (d) Rehabilitation and reconditioning; and
- (e) Education, counseling and program administration,

Provided such care is within the professional preparation and education of athletic trainers and under the direction of a physician licensed in any state or in Canada.

Amend RSA 326-G:2, III as inserted by section 4 of the bill by replacing it with the following:

III. The activities of athletic trainers not residents of this state, when called to perform athletic training services during a temporary visit in this state, provided such athletic trainers are currently licensed, certified or registered in any state or Canada, or are currently certified by the National Athletic Trainers Association Board of Certification, Inc.

Amend RSA 326-G:3 as inserted by section 4 of the bill by replacing it with the following:

326-G:3 Rulemaking. The board shall adopt rules, pursuant to RSA 541-A, relative to the nature of the temporary visit in this state which is sufficient to exempt from the application of this chapter the practitioners of athletic training designated in 326-G:2, III.

Amend RSA 328-A:7, III as inserted by section 20 of the bill by replacing it with the following:

III. A physical therapist assistant applicant may take the examination for licensure after the application process has been completed ***with the exception of submission of documentation showing the applicant has passed the required examination.*** [The] A national examination shall test for requisite knowledge and skills in the technical application of physical therapy services.

Amend RSA 328-A:7, IV(a) and (b) as inserted by section 20 of the bill by replacing it with the following:

***(a) The applicant has completed a new application for licensure, with the exception of submission of documentation showing that the applicant has passed the examination.***

***(b) The applicant has submitted, and the board has approved, a plan for completion of additional training or coursework or both.***

Amend section 21 of the bill by replacing the bill section heading with the following:

21 Physical Therapy Practice; Exemptions. Amend RSA 328-A:8, II(a) to read as follows:

Amend section 22 of the bill by replacing the bill section heading with the following:

22 Physical Therapy Practice; Exemptions. RSA 328-A:8, II(d) is repealed and reenacted to read as follows:

Amend section 23 of the bill by replacing the bill section heading with the following:

23 Physical Therapy Practice; Exemptions. Amend RSA 328-A:8, III(a) to read as follows:

Amend the bill by replacing section 26 with the following:

26 Physical Therapy Practice; Obligations of Licensees. Amend the section heading of 328-A:11 to read as follows:

328-A:11 [~~Patient Care Management~~] ***Obligations of Licensees.***

Amend RSA 328-A:12, II as inserted by section 27 of the bill by replacing it with the following:

II. It is unlawful for any person who is not licensed as a physical therapist assistant under this chapter to assist in selected components of physical therapy intervention requiring the knowledge and skill ~~[or]~~ ***of*** a physical therapist assistant. A person ***licensed as a physical therapist assistant*** who engages in an activity requiring a license ~~[pursuant to this chapter]~~ ***as a physical therapist*** or uses any ~~[work,]~~ title, letters, or any description of services that incorporates one or more of the terms, designations, or abbreviations in violation of RSA 328-A:10 is guilty of a misdemeanor.

Amend section 31 of the bill by replacing the bill section heading with the following:

31 Physical Therapy Practice; Rights of Consumers. RSA 328-A:15, I(c) is repealed and reenacted to read as follows:

Amend section 32 of the bill by replacing the bill section heading with the following:

32 Physical Therapy Practice; Rights of Consumers. Amend 328-A:15, II to read as follows:

Amend the bill by replacing section 33 with the following:

33 Physical Therapy Practice; Rights of Consumers. RSA 328-A:15, VI is repealed and reenacted to read as follows:

VI. Confidential communications between physical therapists and physical therapist assistants and their patients are placed on the same legal basis as those between physician and patient, and, except as otherwise provided by law, no licensee shall be required to disclose such privileged communications. Confidential communications between a patient of a licensee and any person working under the supervision of such licensee to provide services that are customary and necessary for diagnosis and treatment are privileged to the same extent as would be the same communications between the supervising licensee and the patient. The privilege for confidential communications shall not apply to investigations and disciplinary proceedings conducted by any agency regulating health occupations or professions in this state.

Amend section 34 of the bill by replacing the bill section heading with the following:

34 Physical Therapy Practice; Rights of Consumers. Amend 328-A:15, VII to read as follows:

Amend section 35 of the bill by replacing the bill section heading with the following:

35 Physical Therapy Practice; Rights of Consumers. RSA 328-A:15, VIII is repealed and reenacted to read as follows:

Amend RSA 328-A:15, VIII(b) as inserted by section 35 of the bill by replacing it with the following:

(b) Information and records acquired by the board during its investigations of complaints and other information relating to violations of this chapter coming to the attention of the board.

Amend RSA 328-F:2, II as inserted by section 37 of the bill by replacing it with the following:

II. "Governing boards" means individual licensing boards of athletic trainers, ~~[certified]~~ occupational therapy assistants, occupational therapists, physical therapists, physical ~~[therapy]~~ **therapist** assistants, respiratory care practitioners, and speech-language pathologists.

Amend RSA 328-F:2, VI as inserted by section 37 of the bill by replacing it with the following:

VI. "~~[Practice of]~~ Athletic training" means "~~[practice of]~~ "athletic training" as defined in RSA 326-G:1, III.

Amend RSA 328-F:3, II as inserted by section 38 of the bill by replacing it with the following:

II. The governing boards' chairpersons or their appointees shall make up the board of directors of the office of licensed allied health professionals. The board of directors shall, subject to the rules ***adopted by the director*** of the division of personnel, have authority to establish and fill a supervisory position at labor grade 21 and technical and clerical positions to run the office's business in an efficient manner, ***and to contract for the services of investigators and legal counsel. The board of directors shall have the authority to delegate to the person in the supervisory position matters of administrative and personnel management.***

Amend RSA 328-F:5, IV as inserted by section 39 of the bill by replacing it with the following:

IV. Take legal action against unauthorized practice in accordance with this chapter.

Amend RSA 328-F:5, VII as inserted by section 39 of the bill by replacing it with the following:

VII. Carry out the responsibilities set forth in the board's practice act.

Amend RSA 328-F:10 as inserted by section 42 of the bill by replacing it with the following:

328-F:10 Records of Licensees and Disciplinary History.

I. Each governing board shall maintain a current list of living or deceased persons who have ever been licensed to practice ~~[under this chapter]~~. The list shall show the licensee's last known place of employment, last known place of residence, ~~[and the date and]~~ ***the*** number of the license, ***and the most recent date of issuance, renewal, or reinstatement. No information on the list shall be transferred to another entity for commercial use without the permission of the person to whom the information applies.***

II. Each governing board shall maintain a current list of persons against whom the board has taken any disciplinary actions. This list shall include the ~~[names, type and cause of action, date and penalty incurred, and the length of penalty. This list shall be available for public inspection during regular business hours. This list shall be supplied to similar boards in other states upon request]~~ ***name of the person, the reason for the disciplinary action, the date of the disciplinary action, and the nature of the disciplinary action.***

Amend the section heading of RSA 328-F:11 as inserted by section 43 of the bill by replacing it with the following:

328-F:11 Rulemaking by the Governing Boards.

Amend RSA 328-F:11, I(f) as inserted by section 43 of the bill by replacing it with the following:

(f) The design and content of application forms, which forms may require a notarized affidavit that the information provided in the application is complete and accurate.

Amend RSA 328-F:11, I(h) as inserted by section 43 of the bill by replacing it with the following:

(h) The allocation of disciplinary sanctions in cases of misconduct by licensees.

Amend RSA 328-F:11, II(d) as inserted by section 43 of the bill by replacing it with the following:

(d) What constitutes, for disciplinary purposes, sexual relations with and sexual harassment of, a client or patient.

Amend RSA 328-F:18, I and II as inserted by section 49 of the bill by replacing it with the following:

I. Each governing board shall issue initial licenses and license renewals to applicants who have completed the required application procedures and have met the eligibility requirements established by the practice act and the rules of the governing board. If a governing board is authorized by its practice act to issue provisional licenses, it shall issue such licenses to applicants who have completed the required application procedures and have met the eligibility requirements for provisional licensure established by the practice act and the rules of the governing board.

II. The governing boards shall take no action on an application for any type of license, or reinstate any lapsed or suspended license, until the applicants have completed the application procedures required by the practice acts and the rules of the governing boards.

Amend RSA 328-F:19, II as inserted by section 50 of the bill by replacing it with the following:

II. Each governing board shall renew the licenses of applicants who meet the eligibility requirements and complete the application procedure.

Amend the section heading of RSA 328-F:20 as inserted by section 51 of the bill by replacing it with the following:

328-F:20 Reinstatement of Lapsed Licenses.

Amend RSA 328-F:20, II as inserted by section 51 of the bill by replacing it with the following:

II. Meets the reinstatement requirements and any continuing competency requirements established by the governing board.

Amend RSA 328-F:21, as inserted by section 52 of the bill by replacing it with the following:

328-F:21 ~~[Change of Address]~~ ***Administrative Obligations of Licensees.***

**I.** Licensees shall maintain their current business and home address on file with ~~(the applicable board)~~ **their governing boards**. Any changes in address shall be provided to the office no later than 30 days from the date of the change.

**II. Licensees shall notify their governing boards if licenses or other proof of licensure are lost or stolen.**

Amend RSA 328-F:23, II(a) as inserted by section 53 of the bill by replacing it with the following:

(a) Knowingly or negligently providing inaccurate material information to the board or failing to provide complete and truthful material information upon inquiry by the board, including during the process of applying for a license, license renewal, and license reinstatement.

Amend RSA 328-F:23, II(c) and (d) as inserted by section 53 of the bill by replacing it with the following:

(c) Violation of the ethical standards adopted by the governing board.

(d) Sexual relations with, or sexual harassment of, a client or patient.

Amend RSA 328-F:23, II(f) as inserted by section 53 of the bill by replacing it with the following:

(f) Actual or potential inability to render care with reasonable skill and safety by reason of illness, by reason of use of alcohol or drugs or any other material, or by reason of mental or physical condition.

Amend RSA 328-F:23, II(j) as inserted by section 53 of the bill by replacing it with the following:

(j) Violation of any provision of this chapter, of any governing board's practice act or rule adopted pursuant to RSA 541-A, or of any state or federal law reasonably related to the licensee's authority to practice or ability to practice safely.

Amend RSA 328-F:23, IV(e) and the introductory paragraph of subparagraph (f) as inserted by section 53 of the bill by replacing it with the following:

(e) A requirement that the licensee's practice be supervised for a specified period of time by a licensee practicing the same allied health profession for a specified period of time.

(f) The imposition of an administrative fine not to exceed \$1,000 for:

Amend the introductory paragraph of RSA 328-F:24, II as inserted by section 54 of the bill by replacing it with the following:

**II.** Unless used in disciplinary proceedings or required to be disclosed by an order of a court, the following information obtained during investigations shall be held confidential and shall be exempt from the disclosure requirements of RSA 91-A:

Amend RSA 328-F:24, II(d) as inserted by section 54 of the bill by replacing it with the following:

(d) Patient or client records, including clinical records, files, oral and written reports relating to diagnostic findings or treatment of licensees' patients or clients and oral and written information from which the identity of licensees' patients or clients or their families can be derived.

Amend RSA 328-F:24, IV(c) as inserted by section 54 of the bill by replacing it with the following:

(c) Issue subpoenas for persons, relevant documents and relevant things in accordance with the following conditions:



(1) Subpoenas for persons shall not require compliance in less than 48 hours after receipt of service.

(2) Subpoenas for documents and things shall not require compliance in fewer than 15 days after receipt of service.

(3) Service shall be made on licensees by certified mail to the address on file with the board or by hand and shall not entitle them to witness or mileage fees.

(4) Service shall be made on persons who are not licensees in accordance with the procedures and fee schedules of the superior court, and the subpoenas served on them shall be annotated "Fees Guaranteed by the New Hampshire Office of Allied Health Professionals."

Amend RSA 328-F:24, V as inserted by section 54 of the bill by replacing it with the following:

V. The governing board may dismiss allegations of misconduct if the investigation shows the allegations to be without basis in fact or law.

Amend RSA 328-F:25, I as inserted by section 55 of the bill by replacing it with the following:

I. Persons and entities regulated by the state, including but not limited to, licensees, insurance companies, health care organizations, and health care facilities shall report to the board of directors and the appropriate governing board any criminal conviction of a licensee or any determination by a regulatory agency indicating that a licensee has violated this chapter or the practice act of the licensee's governing board. Persons and entities so reporting shall be immune from civil liability if the report is made in good faith.

Amend RSA 328-F:27, V as inserted by section 57 of the bill by replacing it with the following:

V. The attorney general, the governing board of the allied health practice affected or the prosecuting attorney of any county or municipality where the act of unauthorized practice takes place may maintain an action to enjoin any person or entity from continuing to do acts of unauthorized practice. The action to enjoin shall not replace any other civil, criminal or regulatory remedy. An injunction without bond is available to the governing board of the allied health practice affected.

Amend the bill by replacing section 58 with the following:

58 Allied Health Professionals; Privileged Communications. Amend RSA 328-F:28 to read as follows:

328-F:28 ~~[Confidential]~~ **Privileged** Communications. The confidential ~~[relations and]~~ communications between ~~[a practitioner licensed under provisions of this chapter]~~ **allied health licensees** and ~~[the patient of such practitioner]~~ **their clients or patients** are placed on the same **legal** basis as those ~~[provided by law]~~ between ~~[attorney and client]~~ **physician and patient**, and, except as otherwise provided by law, no ~~[such]~~ allied health ~~[practitioner]~~ **licensee** shall be required to disclose such privileged communications. Confidential ~~[relations and]~~ communications between a patient **or client** and any person working under the supervision of ~~[an allied health practitioner]~~ **such licensee** that are customary and necessary for diagnosis and treatment are privileged to the same extent as though those ~~[relations or]~~ communications were with ~~[such]~~ **the** supervising ~~[allied health practitioner]~~ **licensee**. This section shall not apply to investigations and hearings conducted by the ~~[board of allied health practitioners, or any other statutorily created health occupational~~

~~licensing or certifying board conducting licensing, certifying, or disciplinary proceedings]~~ ***governing boards or by any other agency regulating health professions in the state.***

Amend the bill by replacing section 60 with the following:

60 Effect of Amendments. Licenses valid under the provisions of RSA 326-C, RSA 328-A, RSA 326-G, RSA 326-E or RSA 326-F on the effective date of this act shall continue to be in effect.

Amend the bill by replacing all after section 60 with the following:

61 Podiatry; Examinations. Amend RSA 315:7 to read as follows:

315:7 Examinations. ~~[Examinations for licenses shall be given by the board, at least twice annually, at such time and place as the board may determine. The examination papers shall contain such questions relating to the subject as the board may deem necessary to determine the qualifications of the applicant for the business.]~~ ***Successful passage of the National Board of Podiatric Medical Examiners test parts 1 and 2 as well as PM Lexis is required.*** The board shall keep a record of ~~[examinations, together with the examination papers, all of which shall be open to public inspection]~~ ***examination results.***

62 Podiatry; Licenses. Amend RSA 315:8, IV to read as follows:

IV. All licenses issued by the board shall expire ~~[one year from the date of issuance]~~ ***on June 30 of every year*** and shall be subject to the annual renewal requirements provided in RSA 315:11.

63 Podiatry; Fees. Amend RSA 315:15 to read as follows:

315:15 Fees. The board shall establish fees for ~~[examination of applicants, for licenses]~~ ***license applications*** and for renewal of licenses to practice podiatry and for transcribing and transferring records and other services. The fees established by the board shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the board for the previous fiscal year.

64 Repeal. The following are repealed:

I. RSA 328-A:3, V, relative to physical therapy continuing competence.

II. RSA 328-A:5, I(b), relative to physical therapist applications.

III. RSA 328-A:5, II(b), relative to physical therapist applications.

IV. RSA 328-A:5, II(d)-(f), relative to proof of education for physical therapy practice.

V. RSA 328-A:5, IV(b), relative to physical therapist assistant applications.

VI. RSA 328-A:6, relative to hearings on physical therapist applications.

VII. RSA 328-A:11, VI, relative to use of assistive personnel in physical therapy practice.

VIII. RSA 328-F:14, relative to receipts and disbursements.

IX. RSA 328-F:16, relative to interim licenses.

X. RSA 328-F:17, relative to applicants from other states.

XI. RSA 328-F:22, relative to reinstatement.

XII. RSA 315:4, IV, relative to rulemaking on examinations by the board of podiatry.

65 Effective Date. This act shall take effect July 1, 2003.

SENATOR PETERSON: Thank you Mr. President. I move SB 227 ought to pass with amendment. The technical changes in SB 227 are a recommendation of the Joint Legislative Committee on Administrative Rules (JLCAR), which is required by law to make legislative recommendations when appropriate. The JLCAR and the boards of health agree that the current statutes make rulemaking difficult and the bill is needed so that

the boards can work more consistently with each other and for the constituent boards and board of directors. The committee amended the bill to recognize that sleep centers are most often located in academic research settings and operated by students, who were not mentioned in the bill as introduced. By the way, these people are called 'registered polysomnographic technologists' for those who wondered. Senate Bill 227 as amended authorizes students to continue to provide these services and it additionally adds the Board of Podiatry, which was meant to be part of this streamlining effort but was taken out by accident, back into the bill. The committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 37-FN**, increasing the amount paid to the firemen's relief fund from insurance department revenues. Insurance Committee. Ought to pass, Vote 4-0. Senator Flanders for the committee.

### **MOTION TO TABLE**

Senator Flanders moved to have **SB 37-FN** laid on the table.

**Adopted.**

### **LAID ON THE TABLE**

**SB 37-FN**, increasing the amount paid to the firemen's relief fund from insurance department revenues.

**SB 197-FN**, relative to extended unemployment benefits. Insurance Committee. Ought to pass with amendment, Vote 4-0. Senator Cohen for the committee.

**Insurance**

**March 21, 2003**

**2003-0942s**

**08/09**

### **Amendment to SB 197-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to extended unemployment benefits and making an appropriation therefor.

Amend the bill by replacing all after the enacting clause with the following:

1. Money Credited Under Section 90 of Social Security Act. RSA 282-A:140-a is repealed and reenacted to read as follows:

282-a:140-a Money Credited Under Section 903 of Social Security Act.

I. Money credited to the account of this state in the unemployment trust fund by the Secretary of the Treasury of the United States of America pursuant to section 903 of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this state's unemployment compensation law and public employment offices. Such money may be requisitioned pursuant to RSA 282-A:105 for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the ad-

ministration of this state's unemployment compensation law and public employment offices but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money is requisitioned after the date of enactment of an appropriation law which specifies the purpose for which such money is appropriated and the amount appropriated therefor. Such appropriation is subject to the following conditions:

(a) The period within which such money may be obligated is limited to a period ending not more than 2 years after the date of the enactment of the appropriation law except that this restriction does not apply to the special Reed Act distribution under section 903(d) of the Social Security Act; and

(b) The amount which may be obligated is limited to an amount which does not exceed the amount by which, the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the Social Security Act exceeds the aggregate of the amounts used by this state pursuant to this act and charged against the amounts transferred to the account of this state.

II. For purposes of subparagraph I(b), the amounts obligated under an appropriation for the above-described administrative purposes shall be charged against transferred amounts at the exact time the obligation is entered into.

III. The appropriation, obligation, and expenditure or other disposition of money appropriated under this section shall be accounted for in accordance with standards established by the United States Secretary of Labor.

IV. Money appropriated as provided herein for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, shall be deposited in the fund established in RSA 282-A:140 from which such payments shall be made. Money so deposited shall, until expended, remain a part of the unemployment fund and, if it will not be immediately expended, shall be returned promptly to the account of this state in the unemployment trust fund.

V. Notwithstanding paragraph I, moneys credited with respect to federal fiscal years 1999, 2000, and 2001, shall be used by the commissioner with the consent and acceptance of governor and council or budget legislation of allocated funds solely for the administration of the unemployment compensation program and are not subject to appropriation by the legislature. The Reed Act distribution under section 903(c) of the Social Security Act, transferred to the state in October 1998 with respect to the Federal fiscal year 1998, shall be used solely for the administration of this state's unemployment compensation law. The special Reed Act distribution under section 903(d) of the Social Security Act transferred to the state on March 13, 2002 may be used for all purposes set forth in paragraph I.

#### 2 Additional Unemployment Benefits.

I. Additional unemployment benefits are available to an applicant who after May 31, 2002 exhausted benefits under the Temporary Unemployment Compensation Act of 2002.

II. Additional unemployment benefits under this section are payable from the Reed Act, section 903(d) of the Social Security Act, funds that were deposited in the unemployment trust fund account on March 13, 2002 and shall not be used in computing the future tax rate of a taxpaying employer nor charged to a government or nonprofit employer sub-

ject to reimbursing of benefits under RSA 282-A Payments under this section shall terminate upon exhaustion of such Reed Act funds and shall not be paid from any other source.

III. An applicant described in paragraph I is eligible to collect additional benefits for any week through the week ending December 28, 2003, if:

(a) The applicant meets the eligibility requirements of RSA 282-A:31;

(b) The applicant is not subject to a disqualification under RSA 282-A:32;

(c) The applicant is not entitled to any regular or extended unemployment benefits for that week and the applicant is not entitled to receive unemployment benefits under any other state or federal law or the law of Canada for that week; and

(d) The applicant does not become qualified for benefits under any new regular or any other type of unemployment benefits under any state or federal law or the law of Canada. If an applicant qualifies for new regular benefits at any time after exhausting regular unemployment benefits, the applicant must apply for and exhaust entitlement to those new, regular or any other type of unemployment benefits under any state or federal law or the law of Canada.

IV. Income support from any federal reemployment account shall be considered wages for purposes of RSA 282-A:14.

V. The weekly unemployment additional unemployment benefit amount available to an applicant under this section is the same as the applicant's regular weekly benefit amount in his or her applicable benefit year as defined for purposes of the Temporary Unemployment Compensation Act of 2002.

VI. The maximum amount of additional unemployment benefits available is 13 times the applicant's weekly additional unemployment benefit amount.

### 3 Appropriations.

I. There is hereby appropriated out of funds made available to this state under section 903(c) of the Social Security Act transferred to the state in October of 1998 and under 903(d) of the Social Security Act, as amended, transferred to the state on March 13, 2002, the sum of \$3,504,592.22, or so much thereof as may be necessary, not to exceed 10 percent of the total amount paid in benefits under the additional benefits program, to be used, under the direction of the New Hampshire department of employment security for the purpose of administering the additional benefits program, this state's unemployment compensation law and public employment offices.

II. There is hereby appropriated out of funds made available to this state under section 903(c) of the Social Security Act transferred to the state in October of 1998 and under 903(d) of the Social Security Act, as amended, transferred to the state on March 13, 2002, the sum of \$250,000, or so much thereof as may be necessary, to be used, under the direction of the New Hampshire department of employment security, for the purpose of reprogramming costs for the additional unemployment benefits program of this state's unemployment compensation law and public employment offices.

III. Whereas the legislature finds that immediate implementation will provide relief to the eligible unemployed citizens of the state, and notwithstanding any other law to the contrary, the commissioner of employment security may utilize all or any part of the \$250,000 referred to in para-

graph II, he or she deems necessary to supplement the funding of any existing contracts for software maintenance, modification or development. The commissioner shall not be required to obtain approval of any other department, agency, the governor, the governor's council, or legislative committee and shall not be subject to any existing maximum contract or annual expenditure limitations or limitations concerning sole-source contracts.

4 Effective Date.

I. Section 2 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect upon its passage.

**2003-0942s**

**AMENDED ANALYSIS**

This bill makes available additional unemployment benefits.

SENATOR COHEN: Thank you Mr. President. I move that SB 197 ought to pass with amendment as unanimously recommended by the members of the Insurance Committee. This bill is intended to provide additional income support to those individuals who have exhausted benefits under the State Unemployment Compensation Program. Long-term unemployment in our state is a problem that is only getting worse at this point. This is reflected in the national picture as well, where long-term unemployment as a part of overall unemployment has risen from 14 percent to 20 percent within the last year. This past year, the state of New Hampshire received over \$38 million in Federal Reed Act money to supplement its unemployment trust fund. According to a report by the Department of Employment Security, our trust fund currently has over \$290 million in it for unemployment benefits. This appears to be a very solvent number, which means that the state can afford an extended Unemployment Insurance benefits program. People in the North Country are particularly hard hit by the weak economic situation we are facing. This bill would help a lot of our constituents throughout the entire state, and I urge the Senate to pass this bill. Thank you Mr. President.

SENATOR BOYCE: I was just listening to the introduction of this bill and reading through it. I am curious if maybe a better way to solve the unemployment problem in this state might be to...since we are apparently over-flushed in that account, maybe what we need to do is to decrease the Unemployment compensation rate, the amount that is taxed on the back of every employer, and let them put that money back into hiring people rather than paying people to not be hired. That is just a philosophical question that I just wanted to put out there. Thank you very much.

SENATOR D'ALLESANDRO: Thank you very much Mr. President. I think that Senator Boyce really...that is a very constructive idea and I think that the President was asked about that, but failed to act on that. If indeed you want to get more money into the economy, that is one way to do it rather than paying the benefit, which is minimal to begin with, if the amount being withdrawn was reduced, and that money was given to the employer, in order to expand his employment force, we would receive a much better situation. So Senator Boyce, I concur with you. Maybe for the first time, but I do concur with you. I am very pleased to be able to say this publicly before this body. Thank you Mr. President.

SENATOR LARSEN: I rise to support SB 197 and to commend Senator Cohen for helping bring this bill through. The real need that we know is there. There are as many as 1,400 workers who are going to exhaust their unemployment benefits between January and May of this year. We

know that particularly in the North Country, that this is an area where the options for finding re-employment are not always as available. We know that our hi-tech industry is still struggling to recover. Certainly our manufacturing jobs need to be reinvigorated. This money was sitting in an account and it will in fact, be available to those who most need it. This is a very good bill and I recommend ought to pass with amendment.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 186-FN**, relative to sale of tobacco products. Interstate Cooperation Committee. Rerefer to committee, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you Mr. President. I move that 186 be rereferred to committee. As most of you know, the Interstate Cooperation Committee does most of the heavy lifting, and SB 186 was a comprehensive act relative to the sale of tobacco products. It specifically sought to address the illicit trade of cigarettes, tax evasion from products purchased over the Internet and the trade of counterfeit products which result in a loss of tax revenue for the states. The committee had concerns regarding the language in the bill and sought to have an amendment that would appropriately address the problems. Unfortunately, we are at the end of our time to work on the matters and ask that the bill be rereferred in hopes that we could come out next year with an appropriate bill. Thank you.

SENATOR GATSAS: Thank you Mr. President. I agree with my colleague, Senator Clegg. The other reason was that we just wanted to make sure that we had at least one piece of legislation that we could look at for next year.

SENATOR JOHNSON: Thank you Mr. President. If anyone in the Senate Chamber here, is interested in seeing what a counterfeit pack of cigarettes looks like, I have them up in my office. There is a pack of Marlboros and a pack of Slims that are coming from China. You can't tell the difference except for a little counterfeit stamp that is on the bottom.

**Committee report of rerefer is adopted.**

**SB 94-FN**, requiring criminal background checks for employees working in long-term care facilities and in home health care and for applicants for a license from the board of nursing. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Peterson for the committee.

**Senate Judiciary**

**March 18, 2003**

**2003-0836s**

**06/04**

#### **Amendment to SB 94-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** requiring criminal conviction record checks for employees working in long-term care facilities and in home health care and for applicants for a license from the board of nursing.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Home Health Care Providers; Criminal Record Check Required. Amend RSA 151 by inserting after section 2-c the following new section:

151:2-d Criminal Record Check Required.

I. Every applicant selected for employment with a home health care provider licensed under RSA 151:2, I(b), including those which provide only homemaker services, shall submit to the employer a notarized criminal conviction record release authorization form, as provided by the division of state police, which authorizes the release of his or her criminal conviction record to the facility pursuant to RSA 106-B:14.

II. Following submission of the notarized criminal conviction record release authorization form to the division of state police, a home health care provider may extend a conditional offer of employment to a selected applicant, with a final offer of employment subject to review by the employer of the results of a criminal conviction record check.

III.(a) Upon receipt of a notarized criminal conviction record release authorization form from a home health care provider, the division of state police shall conduct a criminal conviction record check pursuant to RSA 106-B:14 and provide the results to the home health care provider. The home health care provider shall review the criminal record information prior to making its final offer of employment and shall maintain the confidentiality of all criminal conviction records received pursuant to this section.

(b) The cost of criminal conviction record checks for such applicants shall be borne by the home health care provider, provided that the home health care provider may require an applicant to pay the actual cost of the criminal conviction record check.

IV.(a) Any agency providing temporary or per diem staff to a home health care provider shall conduct a criminal conviction record check pursuant to this section. The agency shall not offer the services of any person until the agency has reviewed the criminal history of the employee.

(b) The cost of criminal history record check for such temporary or per diem staff shall be borne by the agency providing temporary or per diem staff to a home health care provider, provided that the agency providing per diem staffing may require the selected applicant for employment to pay the actual costs of the criminal conviction record check.

V. The provisions of this section shall not apply to any person who is licensed by the board of nursing pursuant to RSA 326-B.

2 New Section; Residential Care Facilities; Employees; Criminal Record Check Required. Amend RSA 151 by inserting after section 3-b the following new section:

151:3-c Criminal Record Check Required.

I. Every applicant selected for employment with a residential care facility licensed under RSA 151:2, I(e), including a nursing home, shall submit to the employer a notarized criminal conviction record release authorization form, as provided by the division of state police, which authorizes the release of his or her criminal conviction record to the facility pursuant to RSA 106-B:14.

II. Following submission of the notarized criminal conviction record release authorization form to the division of state police, a residential care facility may extend a conditional offer of employment to a selected applicant, with a final offer of employment subject to review by the employer of the results of a criminal conviction record check.



III.(a) Upon receipt of a notarized criminal conviction record release authorization form from a residential care facility licensed under RSA 151:2, I(e), the division of state police shall conduct a criminal conviction record check pursuant to RSA 106-B:14 and provide the results to the residential care facility. The residential care facility shall review the criminal record information prior to making its final offer of employment and shall maintain the confidentiality of all criminal conviction records received pursuant to this section.

(b) The cost of criminal conviction record checks for such applicants shall be borne by the residential care facility, provided that the residential care facility may require an applicant to pay the actual costs of the criminal conviction record check.

IV.(a) The provisions of this section shall apply to any agency providing temporary or per diem staff to a residential care facility. The agency shall not offer the services of any person until the agency has reviewed the criminal history of the employee.

(b) The cost of criminal history record checks for such temporary or per diem staff shall be borne by the agency providing temporary or per diem staff to a residential care facility, provided that the agency providing per diem staffing may require the selected applicant for employment to pay the actual costs of the criminal conviction record check.

V. The provisions of this chapter shall not apply to any person who is licensed by the board of nursing pursuant to RSA 326-B.

3 New Section; Nursing; Criminal Record Checks. Amend RSA 326-B by inserting after section 4-b the following new section:

326-B:4-c Criminal Record Checks.

I. Every new applicant and every renewal applicant for a license under this chapter shall submit to the board a notarized criminal conviction record release authorization form, as provided by the division of state police, which authorizes the release of his or her criminal conviction record to the board pursuant to RSA 106-B:14.

II. Upon receipt of a notarized criminal conviction record release authorization form from the board, the division of state police shall conduct a criminal conviction record check pursuant to RSA 106-B:14 and provide the results to the board.

III. The board shall review the criminal record information prior to making a licensing decision and shall maintain the confidentiality of all criminal conviction records received pursuant to this section.

IV. The board may require the applicant to pay the actual costs of the criminal conviction record check.

4 Effective Date. This act shall take effect July 1, 2003.

2003-0836s

### AMENDED ANALYSIS

This bill requires criminal conviction record checks for all applicants for a license from the board of nursing and all employees working in long-term care facilities, home health care, and residential care.

SENATOR PETERSON: Thank you Mr. President. I move SB 94-FN as ought to pass with amendment. Senate Bill 94 was filed as a result of a study committee and requires criminal background checks for employees working in long-term care facilities, in-home healthcare and applicants for licensing by the Board of Nursing. Currently, licensed childcare agencies, schools, and community residences already have background checks on employees. The elderly are the only vulnerable population that has not been afforded the same protection. I want to thank the members

of the Judiciary Committee, particularly Senator D'Allesandro for hard work on an amendment that I believe got this bill right. It is an important bill. We ask that you join the Judiciary Committee in its recommendation that SB 94-FN be adopted with amendment. Thank you.

SENATOR D'ALLESANDRO: Thank you Mr. President. I would like to take this opportunity to thank the committee. Senator Peterson, Senator Foster, and all of those who participated. This was a long, drawn out process. We had iteration after iteration. It was through their perseverance that we got a bill, so I certainly appreciate that. I think that the people in these nursing homes certainly appreciate that. It just proves once again, that working together we can make a difference. Thank you.

SENATOR LARSEN: Senator Peterson, will this bill check...besides criminal background checks, will it be a check on those who may have been adjudicated criminally insane or would there be a way to check on criminally insane or any other kind of reference to those who might not be appropriately in a nursing home?

SENATOR PETERSON: Well if you say criminally, I suppose that would come through the Department of Safety check. If they had, at some point or another, been involved in some mental treatment or care, that might not show up. This bill here, is specifically relating to a criminal background check and we are getting some wonderful interstate cooperation on this now, which I think will enhance our opportunity to get the people who go into the healthcare field. So I believe that the bill is a significant step forward. There might need to be additional legislation that would cover every aspect of the point that you raised.

SENATOR LARSEN: Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 203-FN**, requiring the New Hampshire court system to automate mental health records to comply with federal law prohibiting possession of firearms by certain persons. Judiciary Committee. Inexpedient to legislate, Vote 4-1. Senator Clegg for the committee.

### **MOTION TO TABLE**

Senator Clegg moved to have **SB 203-FN** laid on the table.

### **PARLIAMENTARY INQUIRY**

SENATOR LARSEN: Parliamentary inquiry?

SENATOR EATON (In the Chair): Parliamentary inquiry.

SENATOR LARSEN: Mr. President, if I believe that SB 203 sends an important message. If I believe that persons are already prohibited under federal law, including those prohibited adjudicated mentally ill? If I believe that by tabling this motion that we will allow these prohibited adjudicated mentally ill people to purchase firearms and enable them to either commit a felony or increase the danger of gun violence? If I believe that the most recent incident in Milton, where a young man, a young adult was able to get a firearm...

SENATOR EATON (In the Chair): Is this a parliamentary inquiry?

SENATOR LARSEN: If I believe these things, and I believe that we need to act on reasonable regulations and into enforce federal laws, would I then vote no on tabling?

SENATOR EATON (In the Chair): If you are for it, you will vote yes. If you are not for tabling, you will vote no.

**Question is on the motion to table.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Cohen.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse.**

**The following Senators voted No: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 16 - Nays: 6**

**Motion is adopted.**

### **LAIID ON THE TABLE**

**SB 203-FN**, requiring the New Hampshire court system to automate mental health records to comply with federal law prohibiting possession of firearms by certain persons.

**SB 221-FN**, relative to the offense of obstructing government administration by the use of simulated legal process. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Peterson for the committee.

**Senate Judiciary**

**March 19, 2003**

**2003-0844s**

**05/09**

### **Amendment to SB 221-FN**

Amend RSA 642:1, I as inserted by section 1 of the bill by replacing it with the following:

**I. A person is guilty of a misdemeanor if [he] *that person* uses [~~force, violence,~~] *actual or threatened force or violence, simulated legal process*, or engages in any other unlawful [~~act~~] *conduct* with a purpose to *hinder or* interfere with a public servant, as defined in RSA 640:2, II, performing or purporting to perform an official function[; ~~provided, however, that~~] *or to retaliate for the performance or purported performance of such a function.***

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

**2 Unlawful Simulation of Legal Process.** Amend RSA 638:14 to read as follows:

**638:14 Unlawful Simulation of [Official Notice] *Legal Process.*** A person is guilty of a misdemeanor who, with a purpose to procure the compliance of another with a request made by such person, knowingly sends, mails or delivers to such person a notice or other writing which has no judicial or other sanction, but which in its format or appearance simulates a summons, complaint, court order or process, ***including, but not limited to, lien, indictment, warrant, injunction, writ, notice, pleading, subpoena, or ordinance,*** or an insignia, seal or printed form of a federal, state or local government or an instrumentality thereof, or is otherwise calculated to induce a belief that it does have a judicial or other official sanction.

2003-0844s

## AMENDED ANALYSIS

This bill defines simulated legal process in the context of obstructing government administration and in the context of giving official notice.

The bill also provides additional penalties for committing the offense of obstructing government administration by the use of simulated legal process.

SENATOR PETERSON: Thank you Mr. President. I move SB 221-FN as ought to pass with amendment. Senate Bill 221 defines "simulated legal process" and provides penalties for committing the offense of obstructing government administration through the use of this process. The court system has been working with the Attorney General's office nearly six years on this matter. While the legislation originally protected only public officials, the amendment would protect all citizens. A simulated legal process is where a group pretends to be a court, uses an insignia or official-looking seal and issues a writ or summons on a person under threat of treason if the person does not respond, or a similar device. While this does not occur that frequently, there are organized groups operating in New Hampshire and Carl Drega being perhaps the most well-known member. The Judiciary Committee recommends that SB 221-FN be adopted with amendment. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 34**, relative to independent living retirement communities. Public Affairs Committee. Ought to pass with amendment, Vote 4-1. Senator Larsen for the committee.

**Public Affairs**  
**March 19, 2003**  
**2003-0864s**  
**05/01**

**Amendment to SB 34**

Amend the bill by replacing all after the enacting clause with the following:

1 Assisted Living Residences and Housing for Older Persons; Independent Living Retirement Communities Added. Amend the chapter heading of RSA 161-J to read as follows:

**CHAPTER 161-J**

**ASSISTED LIVING RESIDENCES, *INDEPENDENT LIVING RETIREMENT COMMUNITIES*, AND HOUSING FOR OLDER PERSONS**

2 Assisted Living Residences; Purpose; Reference to Independent Living Retirement Communities Added. Amend RSA 161-J:1 to read as follows:

161-J:1 Purpose. The purpose of this chapter is to establish standards for the uniform disclosure of information to consumers of costs and services provided by assisted living residences, *independent living retirement communities*, and housing for older persons, as well as rules and policies governing advance payments, rate increases, termination of agreements and the rights and responsibilities of residents, to enable consumers to make informed choices and comparisons.

3 New Paragraph; Definition of Independent Living Retirement Communities Added. Amend RSA 161-J:2 by inserting after paragraph III the following new paragraph:

III-a. "Independent living retirement community" means a facility, housing unit, or community, however designated, which is free-standing or part of a larger community, organization, or enterprise, that furnishes to senior citizens 55 years of age and older, on a contractual basis, housing and any additional on-site or off-site services.

4 Applicability of Chapter; Reference to Independent Living Retirement Community Added. Amend RSA 161-J:3 to read as follows:

161-J:3 Applicability. This chapter shall apply to assisted living residences as defined in RSA 161-J:2, II, ***independent living retirement communities as defined in RSA 161-J:2, III-a***, and housing for older persons as defined in RSA 161-J:2, III. ***This chapter shall not apply to continuing care communities as defined in RSA 420-D or condominiums as defined in RSA 356-B:3, V.***

5 Residential Services Agreement; Reference to Independent Living Retirement Community Added. Amend RSA 161-J:4, I to read as follows:

I. A person shall not begin residency in an assisted living residence, ***an independent living retirement community***, or housing for older persons unless a representative of the residence and either the proposed resident or the proposed resident's representative reads and signs a residential services agreement that complies with the provisions of this chapter. Upon signing of the agreement, the residence shall give the resident and the resident's representative, if any, a copy of the agreement and place a copy in the resident's file.

6 Standard Disclosure Summary; Copy and Notice to Prospective Residents. Amend RSA 161-J:5 to read as follows:

161-J:5 Standard Disclosure Summary.

***I. The standard disclosure summary, which shall accompany a residential services agreement, shall be in a form adopted by the commissioner of the department of health and human services by rule pursuant to RSA 541-A.***

***II. A copy of residential services agreement shall be given to prospective residents upon request and at least 24 hours prior to signing.***

7 Applicability of RSA 540 and 540-A; Reference to Independent Living Retirement Community Added. Amend RSA 161-J:7 to read as follows:

161-J:7 Applicability of RSA 540 and 540-A. All provisions of RSA 540 and RSA 540-A shall apply to assisted living residences, ***independent living retirement communities***, and housing for older persons where the residential premises, ***however designated***, are leased or rented to the resident, unless otherwise provided by RSA 151 and RSA 420-D or other applicable law.

8 New Sections; Use of Term Assisted Living; Registration with Department of Justice. Amend RSA 161-J by inserting after section 8 the following new sections:

161-J:9 Use of Term "Assisted Living." The term "assisted living" may only be used in a title, brochure, admission agreement, or other written or promotional materials by an entity that is licensed pursuant to RSA 151.

161-J:10 Registration with Department of Justice. Any person, corporation, partnership, association or other entity operating an independent living retirement community in this state shall file an annual registration statement with the consumer protection bureau of the department of justice, with a copy to the department of health and human services,

bureau of health facilities administration. The registration statement shall include the name and address of the independent living retirement community, the name and address of the registered agent if a corporation, and a complete description of the type of all available services. The independent living retirement community shall insure that the registration statement is available to all current and prospective residents of the community upon request.

9 Effective Date. This act shall take effect January 1, 2004.

SENATOR LARSEN: Thank you Mr. President. I move SB 34 ought to pass with amendment. Senate Bill 34 is the result of a study committee that focused on independent living communities. Over the past 20 years, the number of retirement communities has grown significantly across New Hampshire and the nation while their regulation has not followed each and every change to these communities. Each individual facility promises their residents an array of options and services within their resident contracts. Unfortunately, fees and community policies for these services are often either undisclosed or poorly disclosed to the residents. Senate Bill 34 helps address the lack of regulation and encourages an open air policy relating to marketing practices. The bill establishes standards for the uniform disclosure of information to consumers of costs and services provided to them by assisted living residents as well as independent living retirement communities, and housing for older persons. It also helps define the rules and policies governing advance payments, rate increases, terminations of agreements, and the rights and responsibilities of residents. Overall this bill will enable consumers to make informed choices and comparisons when making a critical decision of where to spend their senior lives. The Public Affairs committee recommends SB 34 ought to pass as amended. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 45**, relative to property tax exemptions and credits for the elderly, veterans, and the disabled, and allowing municipalities to adopt an optional date for filing exemptions. Public Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

**Public Affairs**

**March 19, 2003**

**2003-0862s**

**10/01**

### **Amendment to SB 45**

Amend the bill by replacing sections 4 - 6 with the following:

4 Property Taxes; Tax Credit for Service-Connected Total Disability; Amount Increased. Amend RSA 72:35, IV(a) to read as follows:

IV.(a) Upon its adoption by a city or town as provided in RSA 72:35-a, any person who has been honorably discharged or an officer honorably separated from the military service of the United States and who has total and permanent service-connected disability, or who is a double amputee or paraplegic because of service-connected injury, or the surviving spouse of such a person, shall receive a yearly tax credit in the amount ~~of~~ **from \$1,400 up to \$2,000** of property taxes on the person's residential property. ***A municipality which had elected under prior***

**law to adopt a \$1,400 credit shall be required to comply with the procedure for adoption in RSA 72:35-a if the municipality wants to adopt an increased credit amount.**

5 Property Taxes; Tax Credit for Service-Connected Total Disability; Procedure for Adoption; Amount Increased. Amend RSA 72:35-a, I(c) to read as follows:

(c) The wording of the question shall be: "Shall we adopt the provisions of RSA 72:35, IV for an optional tax credit on the taxes due on residential property for a service-connected total disability? The optional disability tax credit is **an amount from \$1,400 up to \$2,000**, rather than \$700."

6 Exemption for the Disabled; Optional Extension Added. Amend RSA 72:37-b to read as follows:

72:37-b Exemption for the Disabled.

I. Upon its adoption by a city or town as provided in RSA 72:37-c, any person who is eligible under Title II or Title XVI of the federal Social Security Act for benefits to the disabled shall receive a yearly exemption in an amount to be chosen by the town or city.

I-a. Upon the adoption of this paragraph by a city or town as provided in RSA 72:37-c, a person eligible under Title II or Title XVI of the federal Social Security Act on his or her sixty-fifth birthday shall remain eligible for a yearly exemption either in the amount of the exemption applicable under paragraph I or the amount of the elderly exemption granted to the person under RSA 72:39-b, whichever is greater.

II. The ~~[exemption]~~ **exemptions** in paragraph I **and I-a** may be applied only to property which is ~~[occupied as the principal place of abode by]~~ the disabled ~~[person]~~ **person's principal place of residence and domicile for purposes of RSA 654:1**. The exemption may be applied to any land or buildings appurtenant to the residence or to manufactured housing if that is the principal place of ~~[abode]~~ **residence and domicile**.

III. **No exemption shall be allowed under paragraphs I or I-a unless the person applying for an exemption:**

(a) **Has resided in this state for at least 5 years preceding April 1 in the year in which the exemption is claimed.**

(b) **Had, in the calendar year preceding said April 1, a net income from all sources, or if married, a combined net income from all sources, of not more than the respective amount determined by the city or town for purposes of paragraphs I or I-a. Under no circumstances shall the amount determined by the city or town be less than \$13,400 for a single person or \$20,400 for married persons. The net income shall be determined by deducting from all moneys received, from any source including social security or pension payments, the amount of any of the following or the sum thereof:**

(1) **Life insurance paid on the death of an insured.**

(2) **Expenses and costs incurred in the course of conducting a business enterprise.**

(3) **Proceeds from the sale of assets.**

(c) **Owns net assets not in excess of the amount determined by the city or town for purposes of paragraph I, excluding the value of the person's actual residence and the land upon which it is located up to the greater of 2 acres or the minimum single family residential lot size specified in the local zoning ordinance. The amount determined by the city or town shall not be less than \$35,000 or, if married, combined net assets in such greater amount as may be determined by the town or city. "Net assets" means the**

*value of all assets, tangible and intangible, minus the value of any good faith encumbrances. "Residence" means the housing unit, and related structures such as an unattached garage or woodshed, which is the person's principal home, and which the person in good faith regards as home to the exclusion of any other places where the person may temporarily live. "Residence" shall exclude attached dwelling units and unattached structures used or intended for commercial or other nonresidential purposes.*

*IV. Additional requirements for an exemption under paragraphs I or I-a shall be that the property is:*

*(a) Owned by the resident;*

*(b) Owned by a resident jointly or in common with the resident's spouse, either of whom meets the requirements for the exemption claimed;*

*(c) Owned by a resident jointly or in common with a person not the resident's spouse, if the resident meets the applicable requirements for the exemption claimed;*

*(d) Owned by a resident, or the resident's spouse, either of whom meets the requirements for the exemption claimed, and when they have been married to each other for at least 5 consecutive years.*

Amend the bill by replacing section 13 with the following:

13 Property Taxation; Adoption or Modification of Elderly Exemption; Net Assets for Married Persons. Amend RSA 72:39-b, I(c) to read as follows:

*(c) The wording of the question shall be: "Shall we modify the elderly exemptions from property tax in the town (city) of \_\_\_\_\_, based on assessed value, for qualified taxpayers, to be as follows: for a person 65 years of age up to 75 years, (here insert dollar amount); for a person 75 years of age up to 80 years, (here insert dollar amount); for a person 80 years of age or older (here insert dollar amount). To qualify, the person must have been a New Hampshire resident for at least 5 years, own the real estate individually or jointly, or if the real estate is owned by such person's spouse, they must have been married **to each other** for at least 5 **consecutive** years. In addition, the taxpayer must have a net income of not more than (here insert a dollar amount not less than \$13,400) or, if married, a combined net income of less than (here insert a dollar amount not less than \$20,400); and own net assets not in excess of (here insert a dollar amount not less than \$35,000 excluding the value of the person's residence) **or, if married, combined net assets not in excess of (here insert a dollar amount of \$35,000 or greater) excluding the value of the residence.**" Under no circumstances shall the amounts of the exemption for any age category be less than \$5,000. **The combined net asset amount for married persons shall apply to a surviving spouse until the sale or transfer of the property by the surviving spouse or until the remarriage of the surviving spouse.***

Amend the bill by deleting section 9 and renumbering the original sections 10-15 to read as 9-14, respectively.

2003-0862s

#### AMENDED ANALYSIS

This bill:

I. Allows towns and cities to increase the property tax credit for service-connected total disability from \$1,400 to an amount up to \$2,000.



II. Increases the amount of the optional veterans' property tax credit.

III. Allows for the adoption by municipalities of a married persons' net asset qualification for purposes of the elderly exemption. Such combined net asset qualification shall apply to a surviving spouse until the sale or transfer of the property, or until the remarriage of the surviving spouse.

IV. Allows towns or cities to adopt different net income limits for each age group in the elderly property tax exemption.

V. Allows municipalities to adopt an extension of the property tax exemption for disabled persons who are 65 years of age or older.

VI. Clarifies references to married persons in certain property tax exemption statutes.

VII. Allows towns or cities to adopt an optional filing date for all exemptions, deferrals, or tax credits. Current law allows adopting the optional filing date only for the elderly exemption.

SENATOR BARNES: Thank you Mr. President. I move SB 45 ought to pass with amendment. The bill allows municipalities to adjust their property tax exemptions and credits for the elderly veterans and the disabled through the able municipalities to increase their property tax credit for veterans and service-connected total disability. Exemptions for the disabled can now range from \$1,400 to an amount up to \$2,000. Senate Bill 45 ensures that a disabled person, once they turn 65, receives whichever tax exemption is greater. It removes the original residency requirement to live in a certain property for five consecutive years and has replaced it with a requirement to live in this state for a minimum of five consecutive years preceding April 1. Finally, SB 45 clarifies the qualifications for married persons to obtain certain tax exemptions. Senate Bill 45 has the support of the New Hampshire Municipal Association and passed unanimously in committee. Therefore, I move SB 45 ought to pass as amended and would appreciate your help in making that happen. Thank you.

### **Amendment adopted.**

Senator Gatsas offered a floor amendment.

Sen. Gatsas, Dist. 16

**March 19, 2003**

**2003-0903s**

**10/09**

### **Floor Amendment to SB 45**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to property tax exemptions and credits for the elderly, veterans, and the disabled, and allowing municipalities to adopt an optional date for filing exemptions.

Amend the bill by replacing all after the enacting clause with the following:

1 Veterans' Tax Credit; Amount Increased. Amend RSA 72:28, V to read as follows:

V. Upon its adoption by a city or town as provided in RSA 72:28-a, the veterans' tax credit shall be *an amount from \$100 up to \$500* subtracted each year from the property tax on the veteran's residential property. However, the surviving spouse of a resident who suffered a service-connected death may have the sum subtracted from the property tax on any real property in the same municipality where the surviving spouse is a resident.

2 Procedure for Adoption. Amend RSA 72:28-a, I(c) to read as follows:

(c) The wording of the question shall be: "Shall we adopt the provisions of RSA 72:28, V and VI for an optional veterans' tax credit and an expanded qualifying war service for veterans seeking the tax credit? The optional veterans' tax credit is [~~\$100, rather than \$50~~] (*here insert amount from \$100 up to \$500*)."

3 Property Taxation; Optional Date for Filing Exemption. Amend RSA 72:33-b to read as follows:

72:33-b Optional Date for Filing for [~~Elderly Exemption~~] **Exemptions.**

I. Any town or city may opt to change the date for filing for [~~an elderly exemption~~] **all of the exemptions, deferrals, or tax credits listed** under RSA 72:33 from March 1 to the August 1 prior to the setting of the tax rate. Any town or city may adopt the August 1 date for filing in the following manner:

(a) In a town, the question shall be placed on the warrant of a special or annual town meeting under the procedures set out in RSA 39, and shall be voted upon by ballot. In a city or charter town, the legislative body may consider and act upon the question in accordance with its normal procedures for passage of resolutions, ordinances, and other legislation. The legislative body of a city or charter town may vote to place the question on the official ballot for any regular municipal election, or, in the alternative, shall place the question on the official ballot for any regular municipal election upon submission to the legislative body of a petition signed by 5 percent of the registered voters.

(b) The governing body shall hold a public hearing on the question at least 15 days but not more than 30 days before the question is to be voted on. Notice of the hearing shall be posted in at least 2 public places in the municipality and published in a newspaper of general circulation at least 7 days before the hearing.

(c) The wording of the question shall be: "Shall we adopt the August 1 prior to the setting of the tax rate as the date for filing for [~~an elderly exemption from~~] **exemptions, deferrals, and tax credits against** the property tax?"

II. If a majority of those voting on the question vote "Yes," the August 1 filing date for [~~the elderly exemption~~] **exemptions, deferrals, or tax credits** shall apply within the town or city on the date set by the governing body.

III. Within 60 days from the initial adoption of the August 1 filing date for [~~the elderly exemption~~] **exemptions, deferrals, or tax credits**, the governing body of the town or city shall send a prominent written notice of the change of filing date to all residential property taxpayers in the town or city.

4 Property Taxes; Tax Credit for Service-Connected Total Disability; Amount Increased. Amend RSA 72:35, IV(a) to read as follows:

IV.(a) Upon its adoption by a city or town as provided in RSA 72:35-a, any person who has been honorably discharged or an officer honorably separated from the military service of the United States and who has total and permanent service-connected disability, or who is a double amputee or paraplegic because of service-connected injury, or the surviving spouse of such a person, shall receive a yearly tax credit in the amount [~~of~~] **from \$1,400 up to \$2,000** of property taxes on the person's residential property. **A municipality which had elected under prior law to adopt a \$1,400 credit shall be required to comply with the procedure for adoption in RSA 72:35-a if the municipality wants to adopt an increased credit amount.**

5 Property Taxes; Tax Credit for Service-Connected Total Disability; Procedure for Adoption; Amount Increased. Amend RSA 72:35-a, I(c) to read as follows:

(c) The wording of the question shall be: "Shall we adopt the provisions of RSA 72:35, IV for an optional tax credit on the taxes due on residential property for a service-connected total disability? The optional disability tax credit is ***an amount from \$1,400 up to \$2,000***, rather than \$700."

6 Exemption for the Disabled; Optional Extension Added. Amend RSA 72:37-b to read as follows:

72:37-b Exemption for the Disabled.

I. Upon its adoption by a city or town as provided in RSA 72:37-c, any person who is eligible under Title II or Title XVI of the federal Social Security Act for benefits to the disabled shall receive a yearly exemption in an amount to be chosen by the town or city.

I-a. Upon the adoption of this paragraph by a city or town as provided in RSA 72:37-c, a person eligible under Title II or Title XVI of the federal Social Security Act on his or her sixty-fifth birthday shall remain eligible for a yearly exemption either in the amount of the exemption applicable under paragraph I or the amount of the elderly exemption granted to the person under RSA 72:39-b, whichever is greater.

II. The ~~[exemption]~~ ***exemptions*** in paragraph I ***and I-a*** may be applied only to property which is ~~[occupied as the principal place of abode by]~~ the disabled ~~[person]~~ ***person's principal place of residence and domicile for purposes of RSA 654:1***. The exemption may be applied to any land or buildings appurtenant to the residence or to manufactured housing if that is the principal place of ~~[abode]~~ ***residence and domicile***. ***Nothing in this section shall preclude a qualified applicant from earning an income.***

***III. No exemption shall be allowed under paragraphs I or I-a unless the person applying for an exemption:***

***(a) Had, in the calendar year preceding said April 1, a net income from all sources, or if married, a combined net income from all sources, of not more than the respective amount determined by the city or town for purposes of paragraphs I or I-a. Under no circumstances shall the amount determined by the city or town be less than \$13,400 for a single person or \$20,400 for married persons. The net income shall be determined by deducting from all moneys received, from any source including social security or pension payments, the amount of any of the following or the sum thereof:***

***(1) Life insurance paid on the death of an insured.***

***(2) Expenses and costs incurred in the course of conducting a business enterprise.***

***(3) Proceeds from the sale of assets.***

***(b) Owns net assets not in excess of the amount determined by the city or town for purposes of paragraph I, excluding the value of the person's actual residence and the land upon which it is located up to the greater of 2 acres or the minimum single family residential lot size specified in the local zoning ordinance. The amount determined by the city or town shall not be less than \$35,000 or, if married, combined net assets in such greater amount as may be determined by the town or city. "Net assets" means the value of all assets, tangible and intangible, minus the value of any good faith encumbrances. "Residence" means the housing unit,***

*and related structures such as an unattached garage or woodshed, which is the person's principal home, and which the person in good faith regards as home to the exclusion of any other places where the person may temporarily live. "Residence" shall exclude attached dwelling units and unattached structures used or intended for commercial or other nonresidential purposes.*

*IV. Additional requirements for an exemption under paragraphs I or I-a shall be that the property is:*

*(a) Owned by the resident;*

*(b) Owned by a resident jointly or in common with the resident's spouse, either of whom meets the requirements for the exemption claimed;*

*(c) Owned by a resident jointly or in common with a person not the resident's spouse, if the resident meets the applicable requirements for the exemption claimed;*

*(d) Owned by a resident, or the resident's spouse, either of whom meets the requirements for the exemption claimed, and when they have been married to each other for at least 5 consecutive years.*

7 Procedure for Adoption; Exemption for the Disabled. RSA 72:37-c is repealed and reenacted to read as follows:

72:37-c Procedure for Adoption.

I. Any town or city may adopt the provisions of RSA 72:37-b, I, and may either jointly or separately adopt the provisions of RSA 72:37-b, I-a, in the following manner:

(a) In a town, the question shall be placed on the warrant of a special or annual town meeting, by the governing body or by petition pursuant to RSA 39:3, and shall be voted upon by official ballot if that town has adopted the official ballot for the election of officers. A public hearing shall be held at least 15 but not more than 60 days prior to the vote.

(b) In a city or town with a town council, the legislative body may consider and act upon the question in accordance with its normal procedures for passage of resolutions, ordinances, and other legislation. In the alternative, the legislative body of such city or town may vote to place the question on the official ballot for any regular municipal election.

II. The vote shall specify the provisions of the exemption provided in RSA 72:37-b, I or the extension of the exemption provided in RSA 72:37-b, I-a. The exemption shall take effect in the tax year beginning April 1 following its adoption.

III. A municipality may modify or rescind the exemptions provided by this section in the manner described in this section.

8 Tax Deferral for the Elderly and Disabled; Qualifications Clarified. Amend RSA 72:38-a, I(b) to read as follows:

(b) Has owned the homestead for at least 5 **consecutive** years; and

9 Conditions for Elderly Exemption. Amend the introductory paragraph of RSA 72:39-a, I(b) to read as follows:

(b) Had in the calendar year preceding said April 1 a net income from all sources, or if married, a combined net income from all sources, of not more than the respective amount **applicable to each age group as** determined by the city or town for purposes of RSA 72:39-b. Under no circumstances shall the amount determined by the city or town be less than \$13,400 for a single person or \$20,400 for married persons. The net income shall be determined by deducting from all moneys received, from any source including social security or pension payments, the amount of any of the following or the sum thereof:

10 Property Taxation; Conditions for Elderly Exemption; Net Assets for Married Persons. Amend RSA 72:39-a, I(c) to read as follows:

(c) Owns net assets not in excess of the amount determined by the city or town for purposes of RSA 72:39-b, excluding the value of the person's actual residence and the land upon which it is located up to the greater of 2 acres or the minimum single family residential lot size specified in the local zoning ordinance. The amount determined by the city or town shall not be less than \$35,000. ***A city or town may set a combined net assets amount for married persons in such greater amount as the legislative body of the city or town may determine.*** "Net assets" means the value of all assets, tangible and intangible, minus the value of any good faith encumbrances. "Residence" means the housing unit, and related structures such as an unattached garage or woodshed, which is the person's principal home, and which the person in good faith regards as home to the exclusion of any other places where the person may temporarily live. "Residence" shall exclude attached dwelling units and unattached structures used or intended for commercial or other nonresidential purposes.

11 New Paragraph; Exemption for Surviving Spouse; Combined Net Asset Amount. Amend RSA 72:39-a by inserting after paragraph II the following new paragraph:

III. Upon the death of an owner residing with a spouse pursuant to paragraph II(b) or II(d), the combined net asset amount for married persons determined by the city or town shall continue to apply to the surviving spouse for the purpose of the exemption granted under RSA 72:39-b until the sale or transfer of the property by the surviving spouse or until the remarriage of the surviving spouse.

12 Property Taxation; Adoption or Modification of Elderly Exemption; 5-year Residency Removed; Net Assets for Married Persons. Amend RSA 72:39-b, I(c) to read as follows:

(c) The wording of the question shall be: "Shall we modify the elderly exemptions from property tax in the town (city) of \_\_\_\_\_, based on assessed value, for qualified taxpayers, to be as follows: for a person 65 years of age up to 75 years, (here insert dollar amount); for a person 75 years of age up to 80 years, (here insert dollar amount); for a person 80 years of age or older (here insert dollar amount). To qualify, the person must ~~have been a New Hampshire resident for at least 5 years,~~ own the real estate individually or jointly, or if the real estate is owned by such person's spouse, they must have been married ***to each other*** for at least 5 ***consecutive*** years. In addition, the taxpayer must have a net income of not more than (here insert a dollar amount not less than \$13,400) or, if married, a combined net income of less than (here insert a dollar amount not less than \$20,400); and own net assets not in excess of (here insert a dollar amount not less than \$35,000 excluding the value of the person's residence) ***or, if married, combined net assets not in excess of (here insert a dollar amount of \$35,000 or greater) excluding the value of the residence.***" Under no circumstances shall the amounts of the exemption for any age category be less than \$5,000. ***The combined net asset amount for married persons shall apply to a surviving spouse until the sale or transfer of the property by the surviving spouse or until the remarriage of the surviving spouse.***

13 New Paragraph; Adoption or Modification of Elderly Exemption; Income Limits. Amend RSA 72:39-b by inserting after paragraph I the following new paragraph:

I-a. In addition to the provisions of paragraph I, a town or city may adopt or modify the elderly exemption by including different net income limits, or combined net income limits for married persons, applicable to each of the 3 age groupings listed in subparagraph I(c). Under no circumstances shall the amount determined by the city or town be less than \$13,400 for a single person or \$20,400 for married persons. Any town or city may adopt the provisions of this paragraph by including the provisions in the referendum under paragraph I, or by the following manner:

(a) In a town, the question shall be placed on the warrant of a special or annual town meeting, by the governing body or by petition pursuant to RSA 39:3, and shall be voted upon by official ballot if that town has adopted the official ballot for the election of officers. A public hearing shall be held at least 15 but not more than 60 days prior to the vote.

(b) In a city or town with a town council, the legislative body may consider and act upon the question in accordance with its normal procedures for passage of resolutions, ordinances, and other legislation. In the alternative, the legislative body of such city or town may vote to place the question on the official ballot for any regular municipal election.

(c) The vote shall specify the provisions of the net income limits applicable to each age group listed in subparagraph I(c) as provided in this paragraph. The income limits for each age group shall take effect in the tax year beginning April 1 following its adoption.

(d) A municipality may rescind the net income limits applicable to each age group in the manner described in subparagraph (a) or (b).

14 Repeal. RSA 72:39-a, I(a), relative to the 5-year residency requirement for the elderly exemption, is repealed.

15 Effective Date. This act shall take effect April 1, 2003.

**2003-0903s**

#### AMENDED ANALYSIS

This bill:

I. Allows towns and cities to increase the property tax credit for service-connected total disability from \$1400 to \$2000.

II. Increases the amount of the optional veterans' property tax credit.

III. Allows for the adoption by municipalities of a married persons' net asset qualification for purposes of the elderly exemption. Such combined net asset qualification shall apply to a surviving spouse until the sale or transfer of the property, or until the remarriage of the surviving spouse.

IV. Allows towns or cities to adopt different net income limits for each age group in the elderly property tax exemption.

V. Allows municipalities to adopt an extension of the property tax exemption for disabled persons who are 65 years of age or older.

VI. Clarifies references to married persons in certain property tax exemption statutes.

VII. Allows towns or cities to adopt an optional filing date for all exemptions, deferrals, or tax credits. Current law allows adopting the optional filing date only for the elderly exemption.

VIII. Removes requirements for 5 years of residency in certain exemption and credits.

SENATOR GATSAS: Thank you Mr. President. The amendment that is being passed out basically deals with the disabled person who is employed. I don't think that we want to discriminate basically against them, if they are out there employed, and the community sets limits on income and assets for them to be able to get an exemption. So ba-

sically this is just a housecleaning bill on an amendment that was out there last year. In the drafting, was just left out by mistake on the amendment that we just voted on.

SENATOR LARSEN: Senator Gatsas, we just received, what may be seven to twelve pages of an amendment and could you point out...we are going to have to assume that you have only modified a certain section of this, but I am not sure that we can put our hands on what part you are changing in your amendment. I wondered if you would help us?

SENATOR GATSAS: Page three, lines nine and ten. "Nothing in this section shall preclude a qualified applicant from earning an income".

SENATOR LARSEN: So it is my understanding then, that someone who is employed, perhaps a disabled person who is employed, can still qualify and they can earn an income whether it is...?

SENATOR GATSAS: Right. And the individual municipality would set those limits. So if you are earning above those limits, you would not qualify. If you were under those limits, we are just giving them the opportunity to go out and earn some additional income and still qualify for an exemption.

SENATOR LARSEN: And that is the only change that you have done to the committee's amendment?

SENATOR GATSAS: That is the only change. Yes.

SENATOR LARSEN: Thank you.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 54-FN-L**, relative to the implementation of town or city property revaluations. Public Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Green for the committee.

**Public Affairs**  
**March 19, 2003**  
**2003-0863s**  
**10/01**

### **Amendment to SB 54-FN-LOCAL**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to the local inventory of property values for assessment of property taxes.

Amend the bill by replacing all after the enacting clause with the following:

1 Department of Revenue Administration; Equalization Procedure. Amend the introductory paragraph of RSA 21-J:9-a to read as follows:

The following procedures shall apply in determining the equalization of property within the cities, towns, and unincorporated places as required by RSA 21-J:3, XIII, **but shall not affect a municipality's requirements for inventory of property and assessment of taxes as of April 1:**

2 Inventory of Property; September 1 Deadline; Penalty Added. Amend RSA 21-J:34 to read as follows:

1. A report filed by the governing body of each city, town, unincorporated town, and unorganized place, shall certify the number of residents

and total valuation of each class of property included in the inventory of residents and ratable estates. This report shall be filed by September 1 of each year[~~unless this filing date is extended by the commissioner for just cause~~]. ***Municipalities which fail to timely file the report required by this paragraph due to willful neglect or intentional disregard of laws or rules and not reasonable cause shall pay a penalty to the state in the amount of \$100 for each day that the report is not timely filed. Within 30 days after the imposition of the penalty by the commissioner, officials of the city, town, or unincorporated place upon which the penalty was imposed may appeal by written application to the board of tax and land appeals or the superior court in the county in which the city, town, or unincorporated place is located. The board of tax and land appeals or the superior court, as the case may be, shall determine de novo the correctness of the commissioner's actions.***

3 Property Taxation; Annual List. Amend RSA 74:1 to read as follows:

74:1 Annual List. The selectmen of each town shall annually, in April, make a list of all the polls ***and the total assessed property value***, and ***shall*** take an inventory of all the estate liable to be taxed in such town on the first day of that month.

4 Revised Inventory; Date Clarified. Amend RSA 75:8, I to read as follows:

I. Annually ***by the first day of the local property tax year***, and in accordance with state assessing standards, the assessors and selectmen shall adjust assessments to reflect changes so that all assessments are reasonably proportional within that municipality. All adjusted assessments ***as of the first day of the local property tax year*** shall be included in the inventory of that municipality and shall be sworn to in accordance with RSA 75:7.

5 Property Tax Inventory List. Amend RSA 76:10 to read as follows:

76:10 Selectmen's Lists and Warrant. A list of all property taxes by them assessed ***as of April 1, or as otherwise permitted by statute***, shall be made by the selectmen under their hands, with a warrant under their hands and seal. The list shall be directed to the collector of such town, requiring ~~[him]~~ ***the collector*** to collect the same, and to pay to the town treasurer such sums and at such times as may be therein prescribed. The selectmen shall assess such taxes to the owner as of April 1, or to the current owner, if known. The selectmen of a town or the board of assessors of a city may round off to the nearest dollar the total tax due on each parcel appearing on the list.

6 Effective Date. This act shall take effect 60 days after its passage.

2003-0863s

#### AMENDED ANALYSIS

This bill requires local tax officials to assess and collect property taxes on property valued as of April 1, unless otherwise permitted.

SENATOR GREEN: Thank you Mr. President. The amendment you will see in the calendar starts on page 12 please. The bill has been entirely amended. I move SB 54 ought to pass with amendment. Senate Bill 54 clarifies current statute relative to the inventory of property values for assessment of property taxes. The bill will require local tax officials to assess and collect property taxes on property valued as of April 1, unless otherwise permitted. A penalty of \$100 will be paid to the state for each day the report is not timely filed. The Department of Revenue has



struggled with the assessment timeline and communities using a policy of continuous assessment. Current law does not prevent towns from assessing beyond April 1 or in worst case scenario, right up to the point tax bills are sent out. In a number of cases, individuals have been notified in the spring what their property assessment is and then receive a tax bill with an adjusted dollar amount that is significantly higher. Senate Bill 54 will address this issue and protect our constituents from last minute municipal adjustments. I move SB 54 ought to pass as amended. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 134**, relative to the regulation of real estate brokers by the real estate commission. Public Affairs Committee. Ought to pass with amendment, Vote 4-1. Senator Barnes for the committee.

**Public Affairs**  
**March 17, 2003**  
**2003-0762s**  
**10/01**

#### **Amendment to SB 134**

Amend the bill by replacing section 4 with the following:

4 Bonds. Amend RSA 331-A:14 to read as follows:

331-A:14 Bonds. No principal or managing broker's license shall be issued or renewed until the applicant gives to the commission a surety bond in ~~the~~ **any** form approved by the commission in a sum of not less than \$25,000, executed by the applicant and by a surety company authorized to do business in this state. The bond shall be payable to the state of New Hampshire, for the benefit of any person aggrieved, and shall be conditioned upon the faithful accounting by the broker for all funds entrusted to the broker in the broker's capacity as a principal or managing real estate broker. Any person so aggrieved may bring suit on the bond in the aggrieved person's own name; provided, however, that the aggregate liability of the surety to all persons shall, in no event, exceed the sum of such bond. The commission may revoke the license of any principal or managing broker whenever the bond filed by the broker ceases to be in full force and effect.

Amend the bill by replacing section 11 with the following:

11 Prohibited Conduct. Amend RSA 331-A:26, XXII to read as follows:

XXII. Failing to disclose in writing to an owner, the licensee's intention or true position if the licensee directly, or indirectly through a third party, purchases **or leases** for such licensee, or acquires or intends to acquire any interest in or any option to purchase **or lease** the property. Such disclosure shall be made prior to an offer to purchase **or lease**, and acknowledged in writing by all parties to the transaction.

Amend the bill by deleting section 9 and renumbering the original sections 10-14 to read as 9-13, respectively.

SENATOR BARNES: Thank you Mr. President. I move SB 134 ought to pass with amendment. This bill makes various housekeeping changes to the Real Estate Practice Act concerning the licensure and regulation of real estate brokers by the Real Estate Commission under RSA 331-A. To list a few of the changes, SB 134 will separate the qualifications of a

salesperson and a broker, increase the number of mandatory hours of continuing education classes for license renewal, allow for an online or mail license renewal process, and require full disclosure in writing of a licensee's intention to purchase or lease property. The Public Affairs Committee recommends SB 134 ought to pass as amended and we thank you for your consideration.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 148-FN**, relative to the regulation of water treatment equipment installers by the plumber's board. Public Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Roberge for the committee.

**Public Affairs**  
**March 19, 2003**  
**2003-0861s**  
**08/10**

#### **Amendment to SB 148-FN**

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraphs; Plumber's Board; Water Treatment System Installers. Amend RSA 329-A:2 by inserting after paragraph V the following new paragraphs:

VI. "Water treatment system" means any apparatus for treating or processing water to modify, enhance, or improve its quality or to meet a specific water quality need, desire, or standard, and the pipes, fittings, and other components servicing such apparatus.

VII. "Water treatment technician" means any person who installs, maintains, or repairs water treatment systems.

VIII. "Water treatment trainee" means any person who is engaged in learning about and assisting in installing, maintaining, or repairing water treatment systems under the direct supervision of a person licensed under this chapter.

2 Board; Membership. Amend RSA 329-A:3, I to read as follows:

I. There shall be a state board for the licensing and regulation of plumbers consisting of ~~[5]~~ **7** members: 2 master plumbers, one journeyman plumber, ***one water treatment technician who is neither a master plumber nor a journeyman plumber***; and ~~[2]~~ **3** public members, each to be appointed by the governor, with the approval of the council, to a term of 5 years. No member of the board shall be appointed to more than 2 consecutive terms. A member of the board shall serve as the board secretary.

3 Fees. Amend RSA 329-A:5-a to read as follows:

329-A:5-a Fees. The board shall establish fees for examination of applicants, for licensure and for renewal of licensure to practice under this chapter, and for transcribing and transferring records and other services. The fees established by the board shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the board for the previous fiscal year. ***The fee for the annual renewal of licenses issued to persons or business entities licensed as water treatment technicians shall not be more than the fee for the annual renewal of licenses issued to journeyman plumbers.***

4 Examinations and Licenses. Amend RSA 329-A:7 to read as follows:

329-A:7 Examinations; Licenses. The board shall have authority to examine and license master plumbers, ~~and~~ journeyman plumbers, **and water treatment technicians**. When issued, such license shall be valid throughout the state, and the licensee shall be entitled to perform the work of a master ~~or~~ **plumber**; journeyman plumber, **or water treatment technician**, as the case may be, anywhere within the state without any payment or additional fee. Each applicant for a license shall present to the secretary of the board on a blank furnished by the board a written application for license, containing such information as the board may require, accompanied by the required fee. Such examinations shall be held at such times and places as the board shall determine. The scope of such examinations and the methods of procedure shall be prescribed by the board, ***provided that the scope of examination of water treatment technicians shall be limited to the configuration and installation of water treatment systems and the provisions of this chapter and the rules adopted by the board that relate to water treatment systems.***

5 Licenses; Master Plumbers. Amend RSA 329-A:8 to read as follows:

329-A:8 Licenses; Master Plumbers. Any person who, having held a journeyman plumber's license for at least 6 months, shall, upon the payment of a fee established by the board, be entitled to an examination and, if found qualified by a majority of the board members, be licensed as a master plumber. A license issued under this section shall be publicly displayed at the licensee's principal place of business for as long as such business continues. Any person refused a license may be reexamined ~~[at any subsequent meeting of the board within one year of the time of the refusal without additional fee and thereafter may be examined]~~ as often as ~~[he]~~ **such person** may desire upon payment of a fee established by the board.

6 Licenses; Journeyman Plumbers. Amend RSA 329-A:9 to read as follows:

329-A:9 Licenses; Journeyman Plumbers. Any person who, having successfully completed his **or her** apprenticeship in plumbing, has received an official completion certificate from the organization conducting the program shall, upon payment of a fee established by the board, be entitled to examination and, if found qualified by a majority of the board members, be licensed as a journeyman plumber. A license issued under this section shall be carried on the person licensed and displayed at any time upon request. Any journeyman plumber refused a license may be reexamined ~~[at any subsequent meeting of the board within one year of the time of the refusal without additional fee and thereafter may be examined]~~ as often as he **or she** may desire upon payment of a fee established by the board.

7 New Section; Examinations; Water Treatment Technicians. Amend RSA 329-A by inserting after section 9 the following new section:

329-A:9-a Licenses; Water Treatment Technicians. Any person who has acted as a water treatment trainee for a period of not less than one year shall, upon payment of a fee established by the board, be entitled to examination and, upon achieving the passing score on the examination, be licensed as a water treatment technician. A license issued under this section shall be carried on the person licensed and displayed at any time upon request. Any person failing to achieve the passing score on the examination may be examined as often as he or she may desire upon payment of a fee established by the board. The scope of such examination and the

methods of procedure shall be prescribed by the board, provided, however, that the scope of the examination of water treatment technicians shall be limited to the configuration and installation of water treatment systems and the provisions of this chapter and the rules adopted by the board that relate to water treatment systems.

8 New Paragraphs; Licenses Without Examination. Amend RSA 329-A:10 by inserting after paragraph III the following new paragraphs:

IV. A corporation, partnership, limited liability company, or other business entity that installs, maintains or repairs water treatment systems, provided the entity designates one employee licensed under this chapter who is responsible for the entity's compliance with this chapter and the rules adopted by the board. Within 30 days after termination of employment of such employee by such entity, he or she shall give notice thereof to the board and, if no other employee licensed under this chapter, the entity shall not act as a master plumber until some other employee has obtained a license. Notwithstanding any other provision of this chapter, the board shall not require a fee for an entity that installs, maintains or repairs water treatment systems where the person licensed under this chapter is the sole owner of the entity.

V. A person for an identification card as a water treatment trainee.

9 Exceptions. Amend RSA 329-A:13, V to read as follows:

V. To persons engaged in the installation of any heating, cooling, air conditioning or domestic water heating systems, whether solar, oil, gas or electric, and persons engaged in the installation and servicing of [~~water softeners or~~] swimming pools.

10 New Paragraph; Penalties. Amend RSA 329-A:18 by inserting after paragraph I the following new paragraph:

I-a. Any person, corporation, partnership, limited liability company or other legal entity that installs, maintains or repairs water treatment systems without first having obtained a license issued under this chapter or which employs a person who installs, maintains or repairs water treatment systems who has no such license, unless he or she is an apprentice or water treatment trainee, or procures any license wrongfully or by fraud, shall be guilty of a violation.

11 Transition. Notwithstanding RSA 329-A:9-a, no person shall be required to take an examination to obtain licensure as a water treatment technician under RSA 329-A if prior to January 1, 2005 such person files with the state board for the licensing and regulation of plumbers a statement sworn or affirmed before a notary or other person authorized to administer oaths that he or she has been engaged in the installation, maintenance, or repair of water treatment systems. Any person who files such a statement with the state board for the licensing and regulation of plumbers shall be deemed qualified to be licensed as a water treatment technician unless, after a public hearing, the board finds the person's knowledge and understanding of, and experience with the configuration and installation of water treatment systems are questionable enough to require examination as required under RSA 329-A:9-a. Such person shall be entitled to retain his or her license as a water treatment technician unless and until he or she fails to achieve a passing score on the examination for water treatment technicians. Notwithstanding RSA 329-A, no fee shall be charged for the annual renewal of the license granted to a water treatment system technician if under RSA 329-A:11 such license expires on or before September 30, 2004.

12 New Paragraph; Exceptions. Amend RSA 329-A:13 by inserting after paragraph VI the following new paragraph:

VII. To employees of public drinking water systems and public water system operators certified by the department of environmental services for drinking water treatment.

13 Effective Date.

I. Section 2 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect January 1, 2004.

SENATOR ROBERGE: Thank you Mr. President. I move SB 148 ought to pass with amendment. This bill clarifies the water treatment specialist field and regulates treatment equipment installers under the New Hampshire Plumber's Board. These professionals will be formally recognized, tested, and licensed by the board. The bill also adds two new members to the Plumber's Board, one water treatment technician and one member of the public appointed by the Governor. Employees of public drinking water systems and public water systems' operators certified by the Department of Environmental Services will be exempt from this bill. The Consumer Protection Bureau supports SB 148 and the regulation of water treatment specialists to help further protect New Hampshire's citizens. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 33-FN**, implementing procedures for a hospital to assume care and custody of an abandoned child and creating an exception to the crime of endangering the welfare of a child. Public Institutions, Health and Human Services Committee. Ought to pass with amendment, Vote 4-1. Senator Boyce for the committee.

**Public Institutions, Health and Human Services**

**March 19, 2003**

**2003-0874s**

**04/01**

### **Amendment to SB 33-FN**

Amend the title of the bill by replacing it with the following:

AN ACT establishing a putative fathers' registry in the department of health and human services.

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; Putative Fathers' Registry Amend RSA by inserting after chapter 132-A the following new chapter:

### **CHAPTER 132-B**

#### **PUTATIVE FATHERS' REGISTRY**

132-B:1 Establishment of Registry; Purpose. The commissioner of the department of health and human services shall establish a putative fathers' registry for the purpose of determining the identity and location of a putative father interested in a minor child who is or may be abandoned under RSA 132-A, and to provide notice to the putative father who is interested in asserting his parental rights relative to the minor child. The commissioner may establish informational material and public service announcements necessary to implement this chapter. The commissioner shall have no independent obligation to gather or update the information to be maintained on the registry. The registrant shall be responsible for updating personal information on the registry.

### 132-B:2 Search of Registry.

I. Within 24 hours of receiving a report under RSA 132-A:3, the commissioner of the department of health and human services shall conduct a search of the putative fathers' registry to determine whether a putative father is registered in relation to a child who is or may have been abandoned under RSA 132-A.

II. A search of the registry may be proven by the production of a certified copy of the registration form or by a certified statement of the commissioner of the department of health and human services that after a search, no registration has been found of a putative father in relation to a child who is or may have been abandoned under RSA 132-A.

### 132-B:3 DNA Record.

I.(a) A putative father may, at his own expense, submit a DNA sample for the purpose of establishing a personal DNA record within the putative father's registry. A search of the registry under this section shall include an analysis of the putative father's DNA record, if such record exists.

(b) The analysis shall be performed under the direction of the division, following procedures in conformance with the federal "DNA Identification Act of 1994" Identifying characteristics of the resulting DNA profile shall be stored in a DNA database compatible with and maintained by the Combined DNA Index System or "CODIS," which refers to the national DNA identification index system under the direction of the Federal Bureau of Investigation.

II. The division shall prescribe procedures compatible with the Federal Bureau of Investigation's requirements for the CODIS program, to be used in the collection, submission, identification, analysis, storage, and disposition of DNA samples and DNA records obtained pursuant to this subdivision.

III. The division may contract with third parties for the purposes of this subdivision. Any DNA sample sent to a third party for analysis shall be coded to maintain confidentiality concerning the donor of the sample.

IV. A certificate and the results of the analysis shall be admissible in any court as evidence of the facts stated in the analysis.

V. In this section, "DNA record" shall be as defined in RSA 651-C:1, V, and "DNA sample" shall mean a blood, tissue, hair follicle, or other biological sample provided by a putative father for inclusion in the registry for analysis or storage, or both.

132-B:4 Privacy of Registry Data. Information in the putative fathers' registry, including all information provided in requesting the search of the registry, shall not be considered public records. Information in the registry may be released to a person who is required to search the registry under the provisions of RSA 132-B:1 or RSA 132-B:2.

2 Contingency. If HB 104-FN of the 2003 legislative session is not enacted into law, then this act shall not take effect.

3 Effective Date. This act shall take effect 60 days after its passage.

**2003-0874s**

### AMENDED ANALYSIS

This bill establishes a putative fathers' registry in the department of health and human services to allow fathers to register and establish a DNA record in the registry,

SENATOR BOYCE: Thank you Mr. President. I move ought to pass with amendment on SB 33. The bill as introduced represented the Senate version for establishing a baby safe-haven legislation. In recognition of

the work that the House put into its version, HB 104, which we will be seeing later today, the committee and the prime sponsor of SB 33 took the opportunity to amend SB 33 in order to address concerns from fathers relative to father's rights when a newborn is left at a designated safe-haven. Senate Bill 33 as amended will establish a voluntary putative father's registry to include voluntary DNA testing and will be located at the Department of Health and Human Services. The registry will help identify and locate a father who believes his child may have been abandoned and in helping him in asserting his parental rights by requiring a search of the registry within 24 hours of a baby being relinquished to a safe-haven. The committee recommends ought to pass with amendment. Thank you Mr. President.

SENATOR ESTABROOK: Thank you Mr. President. The provisions of SB 33, originally the baby safe-haven bill, have been totally replaced in executive session to create a program which was not a part of the original bill. A putative father's registry may or may not be a good idea, but the details of its creation are hugely important since they involve the handling of DNA, yet the reincarnated bill did not receive public comment at all. Because the bill has detailed provisions for managing a DNA data base, I am opposed to adopting this bill without public comment and urge you to oppose the committee recommendation of ought to pass with amendment.

#### **Amendment adopted.**

SENATOR LARSEN: I rise to question the wisdom of passing this bill in its current form. As I look back at the hearing report on this bill, there were suggestions made that if we were going to require a safe-haven that we needed to contact the police department to confirm that the child is not missing. That we needed to address fathers' rights, which perhaps we are doing in a future bill. We needed to require hospitals to obtain critical health information about the baby. We heard issues of how a baby left at a church will be attended to, knowing that people who are residents or who may be at a church may not be qualified to handle a newborn baby being dropped off.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise in opposition to the bill. I think in looking at the bill you have the body of the initial piece of legislation that infers one thing, and the amendment takes you in a totally other direction. It is a completely different piece of legislation that really didn't have a hearing. You have one bill talking about one item and amendment that completely changes the subject matter, refers to an entirely different entity and becomes the piece of legislation. It would seem to me, that this would require further public hearing because of the fact that it is a completely different piece of legislation and it has no bearing at all on the initial piece of legislation. No one talks specifically about one item implementing procedures for a hospital to assume care and custody of an abandoned child and creating an exception to the crime of endangering the welfare of a child, and here we have a putative fathers registration of the content of the piece of legislation. It just seems to me that there is a disconnect there in terms of the subject matter. Thank you Mr. President.

SENATOR MARTEL: Thank you very much Mr. President. I disagree with my friend Senator D'Allesandro's opinion as well as Senator Estabrook and Senator Larsen's. When we, in committee, first heard SB 33-FN we knew that there was a bill coming from the House that had already

passed the House, which became HB 104-FN. That bill focused in on the fact that it would be the opportunity for mothers or a parent to bring children to the hospitals and leave them there in a safe-haven in case they didn't want their children. We debated this for at least a couple of hours and maybe three or four days before we came to the determination that we were going to do that. All that this bill does is to allow the father or the mother, okay, primarily the father, if a baby is given up, the opportunity to go to a hospital or a facility where the baby would be held. In order to be able to test the DNA or the blood test of this father, to see if there is a match with the child. This protects the father, as well, as before he had no protection. So SB 33 became the protection for the father. The actual bill to bring the child to a facility that was safe or a safe-haven, allowed the mother to do that or the father to do that, depending on the situation, without having to face any serious charges or any charges at all, became HB 104-FN. So if we look at the entire picture here, we can see that both ideas, okay, in both bills, satisfy the demands of what was needed to protect both father, mother and child specifically, in these cases. This is being done across the country. Now New Hampshire is on the verge of becoming one of those states that accepts and deals with these kinds of situations. I urge my fellow Senators here to pass this bill because it is a very good bill and we should go forward with it. Thank you very much Mr. President.

SENATOR BOYCE: Senator Martel, in committee, didn't we hear in the public hearing on SB 33 when it first came to us, did we not have fathers groups come to us and ask us that if we were going to pass this safe-haven bill to please consider them in the process and asked us to actually put this into the safe-haven bill? And isn't it true that in the discussion, we decided that it would be good to let the House safe-haven bill go by itself and have this bill be amended to be what they asked for...be inserted in that, rather than pass one bill with both things in it, we decided to pass the one bill that came from the House and pass the other bill that puts their registry in. Isn't that what we decided to do?

SENATOR MARTEL: Senator Boyce, that is correct. We had several fathers who came in with concerns like that. When we made the motion to accept to do that, they were quite satisfied that was the proper way to go.

SENATOR CLEGG: Thank you Mr. President. The bill was mine and the amendment is mine. I can tell you that I am also the sponsor on the House Bill side. Exactly what this did was answer some of the complaints of some of the fathers out there who said "how will I know if it is mine, you have got to provide some kind of a system to do that?" Now some of them said that they wanted a system where they could go register and write down the name of the girl that they had relations with and if she ever had a baby, they would like to be notified. Well this doesn't go that far. But we did show it to the Fathers' Rights Group and said that if you think that you fathered a child, you can deposit your DNA and if the child is abandoned, then they will have to check the DNA bank to see if you are there. We can't go any further. That is it. So what we did was, we gave them an opportunity to start a registry, but we didn't want to put the two bills together and confuse the issue, because this is a separate issue, it is something that they asked for. I would like to remind everybody that when it goes to the House, it does get another hearing. Thank you.



SENATOR D'ALLESANDRO: Thank you very much Mr. President. I appreciate those comments and appreciate the fact that when it goes to the House that it does get another hearing. The fact of the matter, and I guess that I am not getting my point across so I will try it one more time, is that you had a piece of legislation that dealt with one subject matter. The amendment totally changes that and moves us in another direction. Now if you are answering a requested need, obviously, there is a way to do that, another piece of legislation or something of that nature. But, it just seems to me that we have here, a dichotomy, because on one hand we have a piece of legislation introduced to handle one thing and we have an amendment that totally removes the process, totally removes the subject matter of the piece of legislation and supplements another piece of legislation. That isn't usually how we do it. This definitely does that. Again, we have a bill that talks about implementing procedures for a hospital to assume care and custody of an abandoned child and creating an exception to the crime of endangering the welfare of a child, and yet we have a putative fathers registry as the bill. There is something, maybe I am not getting it. But it just seems to me that the subject matter of the bill disappears and we have an amendment. Now is it a germane amendment? Well maybe it is, I don't see it. But then again, I leave the wisdom to the body. Thank you Mr. President.

SENATOR CLEGG: Thank you, maybe I can clear this up. In the amendment it says "shall establish a putative fathers registry for the purpose of determining the identity and location of a putative father interested in a minor child who is or may be abandoned under RSA 132-A." That's the RSA that will hopefully come about on baby abandonment. So it is directly tied into the original subject matter, but it means nothing if HB 104 doesn't pass.

SENATOR LARSEN: Obviously, if this is confusing to someone like me, it can be confusing to other people who are attempting to track what legislation is going through and have some input on this. As I looked at the hearing report on SB 33, I saw discussion on hospitals assuming care for an abandoned child. If I had looked further into our calendar, I would have seen that the title even listed in our calendar, does not discuss what is in fact the amendment, which is a putative father's registry. I am concerned that this didn't even have a public hearing. If it did, I would have assumed that our hearing report would also list it. I am very concerned that we haven't had a full review of this putative father's registry and I wonder what putative father is going to want to go and pay extra money to put his DNA in a record that may someday someone might want to check. It is a very unusual concept and I question the process and I would move to recommit this to the committee for further review, and perhaps a public hearing.

**Senator Larsen moved recommit.**

**Motion failed.**

**Senator Barnes moved the question.**

**Adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**Recess.**

Senator Johnson in the Chair.

**SB 78-FN**, establishing the New Hampshire health care information council. Public Institutions, Health and Human Services Committee. Ought to pass with amendment, Vote 4-1. Senator O'Hearn for the committee.

**Public Institutions, Health and Human Services**

**March 18, 2003**

**2003-0820s**

**01/09**

**Amendment to SB 78-FN**

Amend the title of the bill by replacing it with the following:

AN ACT establishing the New Hampshire health care information council.

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; New Hampshire Health Care Information Council. Amend RSA by inserting after chapter 420-J the following new chapter:

**CHAPTER 420-K**

**NEW HAMPSHIRE HEALTH CARE INFORMATION COUNCIL**

420-K:1 Statement of Purpose. The purpose of this chapter is to create a nonprofit, voluntary council to promote informed decision-making, increase accountability in the health care system, and improve health care planning through the collection and maintenance of useful, objective, reliable and comprehensive data and health care information. The council shall serve as a resource for insurers, employers, providers, and purchasers of health care, as well as state government, to continuously assess and improve the cost and quality of health care in New Hampshire and to enhance the ability of New Hampshire consumers and employers to make informed and cost effective health care choices.

420-K:2 Creation of Council. A New Hampshire health care information council is hereby created. The council shall be a nonprofit voluntary corporation under RSA 292 organized for the purpose of compiling, maintaining, and disseminating statewide health care information and data. The council shall be governed by a 17-member board of directors. The board shall administer this chapter and shall report to the governor, the legislature, New Hampshire's congressional delegation, and the public. The council shall be deemed a health oversight agency, as that term is defined by 45 CFR Part 164.501, and shall operate under the authority of the state of New Hampshire. The council shall possess all powers as provided in this chapter and as derived from its status as a nonprofit voluntary corporation, and such additional powers as are specified in its plan of operation approved by the commissioner of the department of health and human services.

420-K:3 Definitions. In this chapter:

I. "Board" means the board of directors of the New Hampshire health care information council.

II. "Commissioner" means the commissioner of the department of health and human services.

III. "Council" means the New Hampshire health care information council.

IV. "Claims data" means encounter information created or received by a licensed health carrier that is used or relied upon to carry out the financial or administrative activities related to the provision of health care.

V. "Direct personal identifier" means a name, postal address information other than town or city, state and zip code, telephone and fax number, electronic mail address, social security number, or other information that identifies a particular individual.

VI. "Health carrier" means any entity subject to the insurance laws and rules of this state, or subject to the jurisdiction of the insurance commissioner, that contracts or offers to provide, deliver, arrange for, pay for or reimburse any of the costs of health services; including an insurance company, a health maintenance organization, a nonprofit health services corporation, or any other entity providing health coverage.

VII. "Health care" means care, services, or prescription drugs that are related to the health of an individual and provided by a licensed health care provider for preventive, diagnostic, therapeutic, or rehabilitative reasons.

VIII. "Health care facility" means an institution primarily providing health care services, including, but not limited to, hospitals and licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings.

IX. "Health care provider" means a hospital, pharmacy, nursing home, long-term care facility, health care facility, or licensed health care professional or group of hospitals or health care professionals that provide health care services, other than supplying medical equipment or products.

X. "Public use data set" means a data set from which all direct personal identifiers have been removed or blanked.

420-K:4 Board of Directors.

I. The council shall be governed by a 17-member board of directors. Members of the board shall serve in a volunteer capacity, and shall not receive compensation, other than reimbursement for expenses.

II. Two members shall serve in an ex-officio capacity and 15 members shall be appointed in accordance with this paragraph:

(a) The commissioner of health and human services, or designee, shall serve in an ex-officio capacity.

(b) The commissioner of insurance, or designee, shall serve in an ex-officio capacity.

(c) One physician representative, appointed by the New Hampshire Medical Society.

(d) Three consumer representatives, who shall be appointed by the commissioner of the department of health and human services, by the commissioner of the insurance department, and by the governor. No consumer representative shall be an employee, officer, or director of any health care insurer, health care provider or health care facility, or otherwise have a significant financial interest in a health care facility, insurer, or provider.

(e) Three business representatives, who shall be appointed by the New Hampshire Chambers of Commerce governing board, by the Business and Industry Association of New Hampshire, and by the governor. No business representative shall be an employee, officer, or director of any health care insurer, health care provider or health care facility, or otherwise have a significant financial interest in a health care facility, insurer, or provider.

(f) Two labor representatives who shall represent the state's largest public sector and private sector unions, appointed by the governor.

(g) One hospital representative, appointed by the New Hampshire Hospital Association.

(h) Two insurance representatives, appointed by the governor.

(i) One health insurance producer, appointed by the commissioner of insurance.

(j) One nursing home or long-term care facility representative, appointed by the commissioner of the department of health and human services.

(k) One local government representative, appointed by the New Hampshire Municipal Association.

### III. The board of directors shall:

(a) Prepare a plan of operation for submission to the commissioner for approval.

(b) Fulfill the duties and responsibilities outlined in the plan of operation.

(c) Prepare an annual budget.

(d) Determine and collect assessments.

(e) Enter into a contract or memorandum of understanding for the compilation, storage and processing of data.

(f) Enter into contracts for the analysis of data and the preparation of reports.

(g) Develop and disseminate health care cost and other information designed to assist businesses and consumers in purchasing health insurance, health care, and long-term care services.

(h) Prepare and make public summaries, compilations and reports based on the data.

(i) Work collaboratively with the department of health and human services to establish a standard format for the submission of claims data.

(j) Develop a fee schedule for providing technical assistance and access to the council's data and information.

(k) Design, operate, and maintain facilities for public and state researchers' use of health care data.

(l) Retain an executive director and other staff to administer the council's activities.

(m) Approve and submit an annual report of its activities to the governor, the legislative oversight committee, the commissioner of the department of health and human services, and the commissioner of the insurance department.

(n) Evaluate biennially the impact and effectiveness of the data collection, the information needs of consumers and businesses, and the relevance and usefulness of the information developed by the council.

### IV. The board shall nominate a chairperson from among its members.

### V. The board shall establish the directors' terms of office.

### 420-K:5 Plan of Operation.

I. The board of directors of the council shall adopt a plan of operation that shall require the approval of the commissioner of the department of health and human services. The plan of operation shall include the following:

(1) A description of the council's proposed consumer education program;

(2) A proposal for the development of a comprehensive information system;

(3) A description of the data sets that the council intends to include in its comprehensive health care information system;

(4) A description of the criteria that the council intends to use to determine the data included in the public use data sets;

(5) The council's procedures for handling and accounting for funds;

(6) The methodology that the council intends to use to determine the amount of the assessment;

(7) The council's requirements for keeping financial and other records of its activities;

(8) The procedures that the council intends to use to establish and maintain public awareness of the council and the data and information available; and

(9) The regular times and places for meetings of the board.

II. The plan of operation shall provide for continuing collaboration with the commissioner on matters including, but not limited to, the criteria to be applied in developing public use data sets, and the format for the submission of claims data.

420-K:6 Duties of the Council.

I. The council shall have the following duties:

(a) The council shall develop a comprehensive health care information system that shall include an all payor claims data set, and other data and information from insurers, third party administrators, state and federal governmental agencies, health care providers, accreditation and other organizations. The information system shall:

(1) Compile and disseminate data pertaining to the cost and utilization of health care services that will assist businesses and consumers in purchasing health care and long-term care services, assist carriers and providers in managing health care delivery and insurance products, and assist government and other policymakers in analyzing and understanding the insurance and health care markets;

(2) Use, build, improve upon and coordinate existing data sources and measurement efforts through the integration of data systems and standardization of concepts;

(3) Provide public access to data collected and used by both public and private sector information systems;

(4) Minimize the burden on those providing data to the New Hampshire health care information council; and

(5) Preserve the reliability, accuracy and integrity of data and health care information while ensuring that the data and health care information is publicly available.

II.(a) The council shall review state, federal, and other data reporting requirements, and shall consider the research and initiatives being pursued by the United States Department of Health and Human Services, the National Committee for Quality Assurance, the Joint Commission on Accreditation of Health care Organizations, and the Centers for Medicare and Medicaid Services to reduce potential duplication and inconsistencies. The council shall report its findings to the New Hampshire congressional delegation and the state's legislative oversight committee on an annual basis.

(b) The council shall collaborate with state agencies and health insurance carriers that collect health-related data while maintaining confidentiality and providing other safeguards as may be required to protect the privacy of individual patients and physicians.

(c) The council shall evaluate biennially the impact and effectiveness of its data collection and data submission requirements. The council shall endeavor to ensure that the data collected and submitted to the council is used to produce information of value to consumers, providers, insurers, employers, and government. In the event that the council determines that the data is not sufficient to allow the council to carry out its duties, the council shall prepare and submit a report to the commissioner proposing legislative changes to require additional data collection.

#### 420-K:7 Collection of Data.

I. The council shall develop and implement data reporting and submission requirements for the filing, processing, storage and analysis of health care data. The data reporting and submission procedures shall:

(a) Use, build and improve upon existing data sources;

(b) Minimize the burden on those providing the data; and

(c) Preserve the reliability, accuracy and integrity of the data while ensuring that data is available to the public.

II. The council shall enter into a memorandum of understanding with the department of health and human services for services necessary to carry out the data collection, analysis, processing and storage activities required under this chapter. The memorandum of understanding shall require that the department annually collect and process hospital discharge data, Medicaid, Medicare and claims data. The department shall provide each of these data sets on a timely basis to the council. The data sets provided to the council shall not include patient names, street addresses, e-mail addresses, telephone numbers, or social security numbers.

III. All licensed health carriers shall be required to submit their claims data to the department of health and human services in accordance with the format and schedule established by the council in collaboration with the department of health and human services. Health carriers and providers shall not be required to submit any data element to the department of health and human services that is not collected in the ordinary course of business.

IV. All health maintenance organizations or other health care plans that collect the Health Employer Data and Information Set (HEDIS) shall annually submit the HEDIS information and data to the council.

V. Data required for submission to the council shall be provided annually or more frequently as specified by the council. The council shall work collaboratively with the department of health and human services to establish a schedule for the submission of data.

VI. The council shall examine the feasibility of merging multiple data sets to create integrated public use data sets and shall report annually to the commissioner on its progress in integrating and merging its data sets.

VII. The council may provide analysis of data upon request. The council may also provide technical assistance at the request of third parties for a reasonable fee. Reasonable technical assistance shall be provided at no charge to any person or entity that is subject to the annual assessment.

#### 420-K:8 Dissemination of Information.

I. The council shall prepare and submit an annual report on its operations, its accomplishments, its priorities, and its current and planned activities to the commissioner, the insurance commissioner, the governor and the legislative oversight committee by January 1 of each year.

II. The council shall have the authority to prepare and issue reports on health care expenditures, health care utilization, health care statistics, health care costs, the health insurance market and trends in benefit design, and access to health care facilities and equipment. The council shall prepare public summaries and shall compile relevant and useful health care information for consumers and for businesses.

III. The council shall establish priorities to fulfill its duties, and shall identify its priorities and proposed implementation schedule in its plan of operation. The council shall set its priorities with due recognition of the complexity of its duties. The council shall prepare a proposed work plan annually to implement and meet its statutory obligations, and shall submit its proposed work plan with its annual report.

IV. The council shall maintain a website for disseminating information to the public and for responding to public inquiries.

420-K:9 Powers of the Council.

I. The council shall retain an executive director, other staff, and professional consultants as necessary to perform its functions.

II. The council may apply, may receive, and may expend funds from any private source or governmental entity by way of grant, donation or loan or in any other manner.

III. The council may purchase, receive, hold, lease or acquire by foreclosure and operate, manage, license and sell, convey, transfer, grant or lease real and personal property together with such rights and privileges as may be incidental and appurtenant to the real and personal property and the use of the real and personal property, including, but not limited to, any real or personal property acquired by the council from time to time in the satisfaction of debts or enforcement of obligations.

IV. The council may accept and expend gifts and donations.

V. The council may enter into contracts, including contracts for services, and incur liabilities for any of the purposes authorized in the contracts.

VI. The council may coordinate with and avail itself of the services of government agencies and the University of New Hampshire System and may assist and otherwise encourage organizations, local or regional, private or public, in the various communities of the state in the collection and processing of health care data.

VII. The council shall adopt bylaws that are consistent with this chapter for the governance of its affairs and all other things necessary or convenient to carry out the lawful purposes of the council.

VIII. The council may enter into contracts and memoranda of understanding with state government for the transfer of funds or use of state government resources and facilities.

IX. The council shall have all powers necessary to provide services or such functions required to fulfill its responsibilities under this chapter.

420-K:10 Revenues and Expenditures.

I. The council shall establish an annual budget by July 1 of each year, and all revenues from fees, assessments and contracts shall be used to defray the costs incurred by the council.

II. Permanent funding for the council shall be obtained from user fees, licensing fees, assessments, contracts, and donations as provided herein.

(a) The council may charge reasonable fees for duplicating, mailing, producing, and publishing information and data.

(b) The council shall impose an annual assessment that shall not exceed \$700,000 on hospitals, ambulatory surgical centers, and licensed health insurance carriers. Any person or entity that is subject to the annual assessment shall not be charged a user fee for access to the council's data and information.

(1) The council shall assess 50 percent of its total assessment to hospitals and ambulatory surgical centers, and 50 percent of its total assessment to licensed health carriers.

(2) The fees assessed to hospitals and ambulatory surgical centers shall be calculated in the following manner: 1/2 of the amount of the total fee assessed shall be based on the ratio of the admissions of the hospital or ambulatory surgical center to all hospitals and ambulatory surgical centers, and 1/2 of the amount of the total fee assessed shall be based on the ratio of the gross operating revenue of each hospital or ambulatory surgical center to the total gross operating revenues of all hospitals and ambulatory surgical centers.

(3) The fee assessed to health carriers shall be a per member fee based on each health insurance certificate or policy issued, renewed, or delivered in New Hampshire, including stop-loss coverage, as provided in RSA 404-G:5, III. The council shall determine the per member assessment on an annual basis using the best available information on or before November 1 of each year.

III. If the council determines that a person or entity has failed to pay the duly imposed assessment, the council shall report that failure to the state agency having regulatory jurisdiction over that person or entity, and the state shall commence proceedings to compel compliance.

IV. The council may enter into contracts to perform analysis of data at the request of third parties. The council shall use revenues received from contracted services to reduce the amount of the assessment.

420-K:11 Public Access to Data.

I. The council shall ensure that public use data is made available and accessible to interested persons.

II. The council shall adopt guidelines for its public use data sets that provide for the release of data in a manner consistent with state and federal law. The guidelines shall protect confidential and privileged information from release, including, but not limited to, financial information regarding specific discounts off-charges, capitation agreements, and other similar contractual arrangements. The council shall submit its public use data guidelines to the commissioner for approval.

III. Notwithstanding any other provision of law, upon request the council shall release its public use data sets for the purposes of research, analysis and aggregate statistical reporting under the following conditions:

(a) The person requesting the data must sign a data use agreement that contains the following provisions;

(1) An agreement not to use or permit others to use the data in any way except for research, analysis and aggregate statistical reporting;

(2) An agreement that all persons using the data sign the data use agreement;

(3) An agreement that the data shall be maintained in a secure environment and that only authorized persons use the data;

(4) An agreement not to release or permit others to release any information that identifies an individual either directly or indirectly;

(5) An agreement not to release or permit the release of data where the number of observations in a particular cell is less than or equal to 5;

(6) An agreement not to link or permit others to link the data to attempt to ascertain the identity of individuals;

(7) An agreement not to use or permit others to use the data to learn the identity of any person included in the data set;

(8) An agreement to indemnify, defend and hold harmless the data sources and the council from any or all claims and losses accruing to any person, organization or other legal entity as a result of violation of this agreement; and

(9) An agreement to acknowledge the source of the data in all reports or analysis published.

(b) The person requesting the data must also provide an assurance to the council that by signing the data use agreement the person understands that a violation of the agreement is subject to criminal prosecution as a violation and subject to a civil penalty of up to \$10,000 per violation.



420-K:12 Collection and Use of Personally Identifiable Data. Notwithstanding any other provision of this chapter, the council shall not receive, collect or disclose, and shall have no power to receive, collect or disclose, any data that includes direct personal identifiers from any person or organization, including but not limited to the state, its agencies and political subdivisions and insurers, hospitals, nursing homes, physicians and other health care providers. For the purposes of this chapter, direct personal identifiers include information relating to an individual which contains primary or obvious identifiers, such as the individual's name, street address, e-mail address, telephone number and social security number.

420-K:13 Appointment of Subcommittees.

I. The council shall have the authority to appoint subcommittees consisting of persons who are not board members, to assist it in carrying out its duties and responsibilities. The subcommittees shall include representatives of hospitals, labor, employers, consumers, and insurance carriers, licensed physicians, experts in the area of health care, and government officials.

II. The subcommittees may assist the council in evaluating and recommending methodologies for use in a statewide health information system that allow for the quantification of variations in attributes and use among patient populations and health care providers and in developing methodologies for making useful and informative comparisons among providers with respect to cost and expenditures, utilization, structural and process measures, and outcomes on a statewide or regional basis. Subcommittees may also be formed to assist the council in developing and disseminating consumer educational materials, in developing methods for data collection, formatting and storage of data, in developing formats for preparing public reports on insurance products, health maintenance organizations, and insurance carriers, as well as health care providers, and in producing meaningful statistical reports that address the public's need for comparative information on health care quality and cost.

III. The council and the department of health and human services shall provide technical assistance to the subcommittees.

420-K:14 Rulemaking Authority. The commissioner may adopt rules as necessary to carry out the purposes of this chapter.

2 Effective Date. This act shall take effect upon its passage.

SENATOR O'HEARN: Thank you Mr. President. I move ought to pass with amendment on SB 78 which establishes a healthcare information council to respond to the increasing data and information needs from public and private health care professionals. Information collection, analysis and access will identify what works and what does not and in turn drive down health care costs by helping the system become more efficient. The council would be funded by an assessment on healthcare providers and insurers and includes an opportunity to receive federal grants. The bill as amended reflects a compromise between the Department of Health and Human Services and the Insurance Department to address issues raised during testimony concerning the need for oversight of the New Hampshire Healthcare Information Council, and the importance of avoiding redundancy in the state's healthcare data capacity. The amendment requires that the Healthcare Information Council operate pursuant to a 'plan of operation' that is approved by the Commissioner of Health and Human Services. In addition, the amendment provides that the Council shall enter into a memorandum of understanding with the Department of Health and Human Services whereby the Department will carry out the data collection, analysis, processing and storage functions re-

quired under the bill. The amendment also strengthens and clarifies privacy standards for the data to be collected. In most other respects the amendment keeps the original structure and purpose of the bill: to create a stakeholder organization that will develop a comprehensive statewide healthcare information system that will introduce transparency into the healthcare market, promote informed decisionmaking, and increase accountability. The committee recommends ought to pass with amendment. Thank you Mr. President.

SENATOR ESTABROOK: Thank you. The intent of this bill, to collect, organize and report on health data and health care services is laudable and why I voted to support the bill in committee. I now believe that the framework that the bill creates to do this can be improved. Senate Bill 78 creates a quasi governmental nonprofit council to manage healthcare data and supports it with taxes on healthcare providers. This adds another \$700,000 in taxes to entities already hurt by proposed cuts in Medicaid and the same ones that are already assessed for collecting and processing similar data. The formation of such a council is opposed not just by the Hospital Association, but also by the Alliance for Health Data Access and Privacy. Members of this alliance include the New Hampshire Public Health Association, the New Hampshire Business and Industry Association, the New Hampshire Center for Public Policy Studies, the New Hampshire Bankers Association, the March of Dimes, the Manchester Public Health Department and many others. For these reasons, I would oppose the committee's ought to pass with amendment and would recommend rerefer to the full Senate.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 96-FN**, establishing a pharmacy assistance program for seniors and disabled persons. Public Institutions, Health and Human Services Committee. Rerefer to committee, Vote 5-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move rerefer on SB 96. The product of a two-year study, SB 96 seeks to address prescription drug costs. The program proposed in this bill is based on a very similar program in the state of Maine; however, the Maine program is still in court and the outcome is not clear. The issue is important and needs to be addressed, and in order to give the committee the opportunity to do so, we unanimously recommended that the Senate rerefer and we will bring it back in the next session in a more workable form. Thank you Mr. President.

SENATOR BARNES: Senator Boyce, did I hear you say that we want to rerefer this because of the state of Maine?

SENATOR BOYCE: There is a program that is very similar to what this would enact in the state of Maine. The federal government, I understand, is taking them to court, and maybe it is the pharmacy companies that have taken them to court, but somebody has it in federal court. It has not yet come out of the court hearings, so we don't know whether what Maine is doing is legal and it certainly wouldn't do us any good to enact something that is going to be found illegal shortly after, so we are just asking to wait until we see what happens in Maine before we follow up on this.

SENATOR BARNES: Thank you Mr. President. Would you believe that I don't make decisions on what is going to happen in the state of Maine? I think that if we did that we would be in big trouble like they are up there. Would you believe that I think this is a very important piece of legislation? I think that people who have gone through prescriptions and what have you, will attest to that. I am not so sure that I want to wait another year to find out what is going to happen. I think that we should take the lead and move on.

SENATOR BOYCE: I believe that you believe that. I believe that it is important, but I also believe that we should not enact something that a federal court is in the process of deciding whether or not it is legal.

SENATOR BARNES: Would you believe that I have heard you several times over the years, not caring what the government does, now all of a sudden the government steps in and it is a big deal?

SENATOR BOYCE: I am simply saying...

SENATOR BARNES: Looks to me like you have changed your philosophy, Senator.

SENATOR BOYCE: I am simply saying that the federal court has jurisdiction in a case that involves a program that is almost identical to this. Thank you.

SENATOR LARSEN: Thank you Mr. President. Senate Bill 96 was introduced as a result of a two-year study on how to address the pharmaceutical needs of 48,000 low income, elderly and disabled who currently have no assistance in paying for what are huge costs to their small budgets. Despite what we heard from the report of the committee, the proposal that was the original SB 96, is not in court. There is a challenge in the United States Supreme Court, which they have already heard the argument, and we will know by June, whether Maine's pharmaceutical discount program is legal and constitutional, but the challenge is to that discount program. What SB 96 was, was a benefits program for New Hampshire's lowest income, elderly and disabled. What I would have urged the committee to do would have been to refer SB 96 to Finance to see if there was a way in fact, to implement even a small pharmacy benefits program. I think that every single one of us, throughout the course of our running for office, heard on this need. We know that people are making choices between medicine and food, between covering essentials and covering their medications. We know that it is a huge problem and we know that there is a way to resolve it. True, it takes some funds, but there will be a point where we need to say, this is a priority for the state and we are willing to look for ways to fund it. The ways to fund it, I believe, would be by getting it to Finance and having a further discussion on how we might do that. If it stays referred in committee, we will not have that discussion until after our budget season is over and we will be looking for the scraps that are left in a very small remaining pool of leftover funds, if any. I think that we need to incorporate this discussion in our Finance discussions. I trust our illustrious Finance Committee to give it a full and good hearing. I would urge that we move SB 96 ought to pass so that it can go to Finance.

SENATOR BARNES: Thank you Mr. President. I was going to say that my recommendation is to vote down the committee report and substitute the motion of ought to pass and send it over to Finance and not dilly dally with this. Let's see if we can do something that most of us promised our constituents over the last three campaigns.

SENATOR JOHNSON (In the Chair): Are you making that motion, Senator Johnson?

SENATOR BARNES: Yes I am Mr. President.

**Recess.**

Senator Eaton in the Chair.

SENATOR EATON: I would like to thank Senator Johnson for stepping up to the Chair for the past several bills. I appreciate it.

### **MOTION TO TABLE**

Senator Clegg moved to have **SB 96-FN** laid on the table.

**Question is on the motion to table.**

**A roll call was requested by Senator Clegg.**

**Seconded by Senator Estabrook.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Flanders, Odell, Roberge, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Cohen.**

**The following Senators voted No: Boyce, Below, Green, Peterson, Foster, Larsen, D'Allesandro, Estabrook.**

**Yeas: 14 - Nays: 8**

**Adopted.**

### **LAI ON THE TABLE**

**SB 96-FN**, establishing a pharmacy assistance program for seniors and disabled persons.

**HB 104-FN**, implementing procedures for a hospital or safe haven to assume temporary care and control of an abandoned child and creating an exception to the crime of endangering the welfare of a child. Public Institutions, Health and Human Services Committee. Ought to pass with amendment, Vote 4-1. Senator Boyce for the committee.

**Public Institutions, Health and Human Services**

**March 19, 2003**

**2003-0878s**

**04/09**

### **Amendment to HB 104-FN**

Amend the bill by replacing all after section 1 with the following:

2 New Paragraph; Offenses Against the Family; Endangering the Welfare of Child or Incompetent; Exception. Amend RSA 639:3 by inserting after paragraph V the following new paragraph:

VI. No person acting in accordance with the provisions of RSA 132-A shall be guilty of an offense under this section.

3 Repeal. RSA 460:28, relative to abandonment by wife, is repealed.

4 Effective Date. This act shall take effect 30 days after its passage.

**2003-0878s**

### **AMENDED ANALYSIS**

This bill declares that a hospital or safe haven shall assume temporary care and control of an abandoned child and shall notify the department of health and human services which shall then notify law enforcement officials. This bill also creates an exception to the crime of endangering the welfare of a child where a parent delivers the child to a hospital or safe haven and the parent does not express an intent to return for the child and repeals the statute on abandonment by a wife.

SENATOR BOYCE: Thank you Mr. President. I move ought to pass with amendment on HB 104. House Bill 104 as amended will allow the parent or parents of a newborn, up to seven days old, to hand the child over to a designated safe haven for the child's care and safety without fear of criminal prosecution. The bill includes churches, 911 response teams, and fire and police departments and hospitals as safe havens, among others. The Department of Health and Human Services is also required to advise law enforcement of a baby being delivered to a safe haven so that a determination may be made as to whether the child has been reported missing. The committee further amended the bill by repealing language that made it a misdemeanor for a wife or mother in the state of New Hampshire to leave her husband and children and to be fined for that, and the fine going to the husband. The committee recommends ought to pass with amendment. Thank you Mr. President.

### PARLIAMENTARY INQUIRY

SENATOR ESTABROOK: I guess that I have a parliamentary inquiry then. I thought that there could be discussion on the bill itself?

SENATOR EATON (In the Chair): No. The amendment is the first order of business.

SENATOR ESTABROOK: Okay.

### Amendment adopted.

Senator Estabrook offered a floor amendment.

Sen. Estabrook, Dist. 21

**March 26, 2003**

**2003-1001s**

**04/09**

### Floor Amendment to HB 104-FN

Amend the title of the bill by replacing it with the following:

AN ACT implementing procedures permitting the temporary care and control of an abandoned child and creating an exception to the crime of endangering the welfare of a child.

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; Temporary Care and Control of Children. Amend RSA by inserting after chapter 132 the following new chapter:

### CHAPTER 132-A

#### TEMPORARY CARE AND CONTROL OF CHILDREN

132-A:1 Definition. In this chapter:

I. "Department" means the department of health and human services.

II. "Hospital" means a public or private institution licensed under RSA 151, and engaged in providing to patients, under supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitative services for the rehabilitation of such persons. For the purposes of this chapter, a hospital outpatient facility shall be deemed to be a hospital.

III. "911 responder" means an emergency medical care provider as defined in RSA 153-A:2, V.

132-A:2 Temporary Care and Control of Children.

I. A hospital, or a 911 responder at an agreed transfer location shall, without a court order, take temporary care and control of a child who is

not more than 7 days old, provided that the child is handed to a person at the hospital, or to a 911 responder, by the child's parent or parents, and the parent or parents did not express an intent to return for the child.

II.(a) The hospital or 911 responder shall attempt to obtain information, as specified on a form provided by the department, from a child's parent or parents concerning the child's medical history and any other information which hospital personnel or a 911 responder deems necessary to protect the physical health or safety of the child.

(b) If the child's parent or parents refuse to provide the requested information, the hospital or 911 responder shall give the child's parent or parents a form on which such information may be submitted, and a prepaid envelope addressed to the department for mailing. The child's parent or parents shall at no time be required to reveal personally identifiable information.

III. A hospital or a 911 responder who takes temporary care and control of a child under this chapter shall ensure the provision of any medical services necessary to protect the physical health or safety of the child.

132-A:3 Notice to Department.

I. Within 24 hours after a hospital or a 911 responder assumes temporary care and control of a child under RSA 132-A:2, the hospital or 911 responder shall notify the department and law enforcement officials that the hospital or 911 responder has assumed temporary care and control of the child.

II. Upon receipt of notice by the hospital or 911 responder, the department shall assume the temporary care and control of the child and shall be responsible for all necessary medical and other costs incurred by the hospital or 911 responder related to the temporary care and control of the child. The department shall reimburse the hospital or 911 responder for any necessary costs incurred prior to the child's placement in the temporary care and control of the department.

III. Within 24 hours of receiving a report under this paragraph, the department shall request law enforcement officials to investigate the incident using all resources available, including the National Crime Information Center database, to determine if the child is a missing child.

IV. Within 7 days of the transfer of a child by one parent pursuant to this chapter, the department, in cooperation with law enforcement officials, shall initiate a search to identify and locate the other parent of the child. The department shall provide notice through appropriate media outlets in the county where the child was transferred. If the other parent is located, he or she shall be notified that his or her child is under the temporary care and control of the department. If the other parent cannot be located within a reasonable period of time, the department shall execute an affidavit attesting to the inability to locate the other parent. Such affidavit shall be filed with the department's petition to terminate parental rights.

132-A:4 Termination of Parental Rights. Transferring a child pursuant to this chapter shall constitute grounds for the termination of the parent-child relationship as to the parent or parents who made the transfer. The department shall initiate proceedings under RSA 170-C to terminate the parental rights of any parent who transfers a child pursuant to this chapter.

132-A:5 Liability. No hospital personnel or 911 responder shall be liable for any claim at law or in equity as a result of action taken pursuant to the requirements of this chapter.

132-A:6 Rulemaking. The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, to implement the provisions of this chapter, including the preparation of a form

to collect medical history details and other relevant information about any child transferred under this chapter. The department shall make such forms and prepaid envelopes available to hospitals and to 911 responders for use pursuant to RSA 132-A:2, II.

2 Husband and Wife; Support of Wife and Children; Abandonment by Wife. Amend RSA 460:28 to read as follows:

460:28 Abandonment by ~~[Wife]~~ **Parent**.

**I.** If any ~~[wife or mother]~~ **parent** shall separate **himself or** herself from **his or** her ~~[husband]~~ **child or children** without cause~~[-or from her children]~~ **he or** she shall be guilty of a misdemeanor. The fine, if any, shall be applied in the discretion of the court to the benefit of the deserted ~~[husband or]~~ **child or children** ~~[or both]~~.

**II. A parent who separates himself or herself from his or her child or children, pursuant to RSA 132-A, shall not be guilty of an offense or subject to a fine under this section.**

3 New Paragraph; Offenses Against the Family; Endangering the Welfare of Child or Incompetent; Exception. Amend RSA 639:3 by inserting after paragraph V the following new paragraph:

**VI.** No person acting in accordance with the provisions of RSA 132-A shall be guilty of an offense under this section.

4 Effective Date. This act shall take effect 60 days after its passage.

**2003-1001s**

### AMENDED ANALYSIS

This bill:

**I.** Allows a hospital, or a 911 responder at an agreed upon location, to assume temporary care and control of an abandoned child and requires that the department of health and human services be notified regarding the abandonment.

**II.** Provides that transferring temporary care and control of a child under the provisions of this act constitutes grounds for terminating the parental rights of a child as to the parent making the transfer.

**III.** Creates an exception to the crime of endangering the welfare of a child where a parent delivers the child to a hospital and the parent does not express an intent to return for the child.

SENATOR ESTABROOK: Thank you Mr. President. I have a floor amendment to present. Though I would not oppose a well crafted baby safe haven bill, I believe that HB 104 is seriously flawed and I therefore, rise in opposition to the committee report. The bill needs changes in addition to its provisions which I am bringing forward in this floor amendment. First of all, HB 104 as it has come to us, includes churches as safe havens. Despite testimony that a safe-haven should be a location which is prepared to provide emergency medical treatment on a 24/7 basis. The bill even requires the safe haven to provide necessary medical services. I do not believe that this is something that could be accomplished at a church location. Secondly, HB 104 does not contain an effort to obtain the child's family medical history. This floor amendment does. Thirdly, the bill as written, does not direct or search for the other parent beyond looking for a missing child. The floor amendment calls for a much more rigorous search for the other parent. Finally, the bill fails to address the termination of parental rights upon abandonment in order to facilitate the child's adoption. The floor amendment makes clear that abandonment is a termination of parental rights for that parent. All of these flaws are addressed in the floor amendment and I urge you to consider

its provisions. Alternatively, if you agree that one or more of these are important elements, I recommend that you rerefer this to committee for further work.

SENATOR MARTEL: Thank you Mr. President. I rise in opposition Mr. President, of this amendment, 1001s. We had numerous people who came in and testified on this bill, proving that all over the country we are finding problems with babies put into dumpsters, in backyards, underneath trucks, just on the street and any other place that you can think of. This bill addresses the need to protect these children. Allowing them to be dropped off at a location where someone can either take care of the child, like maybe in a hospital or a clinic or at a church, where there usually is a rectory or a priest or a synagogue with a rabbi or the Protestant religion that does have someone on hand. I agree that there are some churches that may not be staffed. It would be reasonable to understand that they could be brought to the police department or to the fire department in that case, and let them be responsible for making sure that the baby gets healthcare. This protects the child and makes sure that nothing happens to the child that could cause...if we didn't do it, could cause death. We want to protect and make sure that the mother is protected as well as whoever else, the father may be around and maybe not. That is the reason why in the initial bill, we were talking about protecting the father. I urge that we vote down this amendment because the original bill fills all of the holes that Senator Estabrook says are not filled in this amendment. Thank you Mr. President.

SENATOR BARNES: Senator Martel, would you believe that I am in full agreement to everything that you have said and I, too, will vote against the amendment and agree with your committee's report?

SENATOR MARTEL: Thank you very much Senator Barnes.

SENATOR FOSTER: Thank you Mr. President. Senator Martel, in the original bill, as I read it, and I just want to make sure that I understand it correctly, to find safe haven to include a church, and it requires safe havens to take in these children who are less than seven days old and it requires them to provide medical care. I am wondering if all that is true, why the committee felt that churches were in a position to provide medical care? The other groups obviously could have 911 responders, hospitals and so forth.

SENATOR MARTEL: That is a very good question. The issue was that we have different...every single city and town in the state of New Hampshire is different. It has different geographics, it has differences in the types of buildings that we can go to. Some cities and towns don't have hospitals, but okay, they do have police and fire departments, but if they brought it to the church and the church or fire department or police department could then bring it to a safe location, bring the baby to a hospital nearby or a clinic nearby so that the baby will be cared for. In other words, the intent of this piece of the bill was to make sure that the baby was taken care of. To make sure that it doesn't stay or get stuck on the street somewhere where it could die. That is the reason why we did that. It was in the original bill.

SENATOR FOSTER: Thank you Senator.

SENATOR LARSEN: Senator Martel, if a child were to be left at a church and that church had no one there, there are many, many churches...I suspect that you could go out today and knock on church doors and find that



they are locked. Temples as well. They are not all staffed twenty-four hours. Sometimes in the time of day when you think there might be someone there, there is not. There is no requirement that a church be staffed twenty-four hours, so how can a baby left at a church be guaranteed a safe haven, even if someone is there, that person is not medically qualified, probably to handle a newborn, particularly one that is perhaps under some stress? How can a church handle this, and why would you not consider this amendment to improve the bill, why not work on that part of it?

SENATOR MARTEL: Thank you very much Senator Larsen. I don't believe that this new amendment does help the bill at all. Let me put forth a hypothetical case: I may be a pastor for instance of a church, and I open my door and I find out there is a baby on it, on the front porch. I would automatically check the baby immediately and make sure that the baby seems somewhat healthy and rush that baby to a location, either a clinic, hospital, a doctor or whatever to make sure that the baby is cared for. Go to the fire department, they have EMT's that can do that. Then bring it to a higher amount of care. That way, the baby is assured that it won't be harmed any longer. Sure there are some churches in the state that aren't manned and some synagogues the same way, but if you look at the overall picture, and that was the intent of the original bill, with the churches, it said that most churches are staffed, okay, and that there would be a possibility that a woman or the father is closely related or has a close relationship to a minister or priest or a rabbi. That would entail itself, you know, to leave the baby and have a trust factor there. That is the reason why we did that.

SENATOR LARSEN: Thank you.

SENATOR CLEGG: Thank you Mr. President. I also rise in opposition to the amendment. We have to understand that in the original bill "safe haven" means a church which is attended by a person. Now if we want to say that we require that they provide healthcare services, I think that anybody who is at the church who is handed a baby anonymously is going to call the police, probably 911 or get an ambulance. I think that everybody at a church is pretty much...has some commonsense. Let's talk about what the amendment does: One of the things that we were very careful when we crafted this was to make sure that we didn't scare anyone off, because typically, what you have is a young lady who has hidden her pregnancy for nine months and doesn't want anyone to know. As we saw in Hampton last summer, had her baby out in the morning and hid it under a tarp and went along. If she hadn't been bleeding, you probably never would have known and the baby would have never been found. So the idea that somebody is going to walk in and hand the baby anonymously was a good one. Now the bill says, well let's stop them, let's ask them for their medical history. If they don't want to, we will hand them something. As soon as you stop them and start to question them, they are going to run. Maybe they will run with the baby. We have a choice. The choice is, do we have them drop the babies off anonymously in dumpsters and trash cans in the airport or do we give them a place where the baby actually has one more chance to survival? I chose survival, which is why I will be voting against the amendment and for the bill as the committee had sent it to us. Thank you.

SENATOR BOYCE: What I was going to say has been said.

SENATOR BELOW: Senator Estabrook, does your amendment require that the hospital or 911 responder obtain the medical history, and if the parent simply declined, what option does it provide?

SENATOR ESTABROOK: This floor amendment directs the safe haven to request medical history and if the person dropping off the child is not interested in providing that information, it simply calls for the safe haven to hand them a form to take home, which they may later decide to send in and provide the families medical history.

SENATOR BELOW: Does it require them to identify themselves?

SENATOR ESTABROOK: Not in any way.

SENATOR BELOW: Okay, thank you.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Cohen.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse.**

**Yeas: 6 - Nays: 16**

**Floor amendment failed.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 12-FN-A-L**, establishing a property tax relief program for low income homeowners. Ways and Means Committee. Rerefer to committee, Vote 4-0. Senator Clegg for the committee.

#### **MOTION TO TABLE**

Senator Clegg moved to have **SB 12** laid on the table.

**Adopted.**

#### **LAID ON THE TABLE**

**SB 12-FN-A-L**, establishing a property tax relief program for low income homeowners.

**SB 58-FN-A**, relative to the net operating loss under the business profits tax. Ways and Means Committee. Ought to pass with amendment, Vote 4-0. Senator Boyce for the committee.

**Senate Ways and Means**

**March 20, 2003**

**2003-0927s**

**01/10**

#### **Amendment to SB 58-FN-A**

Amend the bill by replacing all after the enacting clause with the following:

1 Business Profits Tax; Additions and Deductions. Amend the introductory paragraph of RSA 77-A:4 to read as follows:

77-A:4 Additions and Deductions. *Except as otherwise provided in this section*, the following adjustments shall be made to gross business profits in determining taxable business profits:

2 Business Profits Tax; Net Operating Loss; Double Apportionment Eliminated and Amended Returns Permitted. Amend RSA 77-A:4, XIII to read as follows:

XIII. A deduction *from taxable business profits* for the amount of the net operating loss carryover *or carryback* determined under section 172 of the United States Internal Revenue Code in effect on December 31, 1996 provided, however, that in calculating such net operating loss carryover, the election permitted under section 172(b)(3) of the United States Internal Revenue Code in effect on December 31, 1996, shall not be allowed. A net operating loss shall *only* be apportioned in the year incurred according to RSA 77-A:3 *and shall not be apportioned in the year used to reduce taxable business profits*. Net operating losses may only be carried forward for the 10 years following the loss year. For taxable periods ending:

(a) On or before June 30, 2003, the amount of net operating loss generated in a tax year that may be carried forward may not exceed \$250,000.

(b) On or after July 1, 2003 and on or before June 30, 2004, the amount of net operating loss generated in a tax year that may be carried forward may not exceed \$500,000.

(c) On or after July 1, 2004 and on or before June 30, 2005, the amount of net operating loss generated in a tax year that may be carried forward may not exceed \$750,000.

(d) On or after July 1, 2005, the amount of net operating loss generated in a tax year that may be carried forward *or carried back* may not exceed \$1,000,000.

In the case of a business organization not qualifying for treatment as a subchapter C corporation under the United States Internal Revenue Code, such deduction shall be the amount that would be determined under section 172 of the United States Internal Revenue Code in effect on December 31, 1996 if the business organization were a subchapter C corporation and as limited by this section. A deduction for the amount of the net operating loss carryover shall be limited to losses incurred on or after July 1, 1997. *A business organization may file an amended return for net operating loss.*

3 Limitation. Notwithstanding the provisions of section 1 of this act, no taxpayer shall be entitled to any refund of taxes based upon a carryback, if the carryback involved any taxable period which preceded July 1, 2005.

4 Revenue Rule Rescinded. The department of revenue administration's rule Rev 303.03 shall be rescinded and the commissioner of the department of revenue administration shall adopt new rules consistent with this chapter.

5 Effective Date. This act shall take effect July 1, 2005 for taxable periods ending on or after July 1, 2005.

2003-0927s

#### AMENDED ANALYSIS

This bill eliminates double apportionment and permits amended returns for deductions for carrybacks for net operating loss under the business profits tax.

SENATOR BOYCE: Thank you Mr. President. I move ought to pass with amendment on SB 58. Senate Bill 58 addresses two areas of the Net Operating Loss statutes, double apportionment and the prohibition against filing amended tax returns. Currently the tax liability of multi-state businesses in New Hampshire is determined, or apportioned, based on the business's gross profits in the state of New Hampshire. Double

apportionment occurs when a net operating loss in the previous year is applied to gross profits before and after apportionment. The second problem is the prohibition against amending Net Operating Loss tax returns. New Hampshire law forbids the carrying forward of losses if they are carried back first. However, the statute also forbids the filing of an amended tax return. As we heard in committee, this essentially tells business, "heads, we win; tails, you lose" and defeats the intent of our Net Operating Loss laws which is to take into account that businesses are cyclical. Senate Bill 58 eliminates double apportionment and allows businesses to file amended tax returns. The committee amended the bill by changing the effective date from July 1, 2003 to July 1, 2005. The committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 66-FN-A-L**, limiting the exemption from the meals and rooms tax for sales of alcoholic beverages by voluntary nonprofit organizations operating under one-day licenses from the liquor commission. Ways and Means Committee. Ought to pass, Vote 4-0. Senator Clegg for the committee.

**SENATOR CLEGG:** Thank you Mr. President. I move ought to pass on SB 66. The bill adds language relative to the definition of taxable meals which in effect would exempt non-profit organizations with one-day licenses from the meals and rooms tax for up to three days a year. The bill came forward on behalf of events such as the Hampton Beach Seafood Festival, the local Chamber of Commerce's annual event that attracts 250,000 people each day. Last year was the first that a state tax representative delivered a bill to the Chamber of Commerce for the rooms and meals tax on beer income from the three-day license the chamber obtains for the event. The \$3,753 charge was on top of the thousands the festival had generated through its vendors and the surrounding restaurants and hotels. In recognition of the revenue stream events like these provide for the state, an exemption to the meals and rooms tax is a reasonable request and the committee unanimously recommends ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 71-FN-A**, establishing a credit against the business profits tax or the business enterprise tax for health insurance premiums paid by certain businesses. Ways and Means Committee. Ought to pass with amendment, Vote 4-0. Senator Clegg for the committee.

**Senate Ways and Means**

**March 20, 2003**

**2003-0936s**

**09/10**

**Amendment to SB 71-FN-A**

Amend the title of the bill by replacing it with the following:

**AN ACT** establishing a committee to study improving access, affordability, and alternatives in health insurance for New Hampshire consumers.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a committee to study options for improving access, affordability, and alternatives in health insurance for New Hampshire's residents, particularly for the self-employed and New Hampshire's small business employers.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house.

II. A representative from the insurance department and a representative from the department of health and human services shall provide advice to the committee, upon request of the committee chairperson.

III. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study and review all health insurance options, including but not limited to:

I. A state-subsidized insurance plan.

II. Cost containment strategies, including the impact of product design changes on premium and medical costs.

III. A state-designed benefits package that provide tax credits, vouchers, or other financial assistance to offset premium costs.

IV. Pooling strategies among the 3 northern New England states, either to increase state purchasing power or to create a multi-state standardized health insurance benefit package.

V. Creating a purchasing alliance.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2003.

6 Effective Date. This act shall take effect upon its passage.

**2003-0936s**

### AMENDED ANALYSIS

This bill establishes a committee to study improving access, affordability, and alternatives in health insurance for New Hampshire consumers.

SENATOR CLEGG: Thank you Mr. President. I move ought to pass with amendment on SB 71. The bill as introduced sought to encourage small businesses to continue offering employer-paid health insurance by providing an incentive through business tax credits. While recognizing that there are 90,000 uninsured New Hampshire residents, 50 percent of which are working in firms of less than 50 employees, the state is currently challenged to provide services to existing programs. With the support of the prime sponsor, the committee amended the entire bill to become a study committee charged with studying options to improve the access, alternatives and affordability in health insurance for New Hampshire's residents,

including partnering with other states and creating purchasing alliances, among others. The committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

SENATOR LARSEN: I would only rise to say that we are in fact going to study the issue of how to provide health insurance and to provide affordable health insurance and perhaps insurance to self-employees that is affordable at the same time. This is summer study and hopefully we will have some answers for next session. I think that everyone would acknowledge the difficulty that New Hampshirites are currently facing in finding affordable health insurance in the state. Hopefully, we will find some avenues to correct that for the next session.

SENATOR EATON (In the Chair): I know that we will have a lot of volunteers to offer for the study committee.

**Adopted.**

**Ordered to third reading.**

**SB 117-FN-A-L**, authorizing video lottery administered by a gaming oversight authority. Ways and Means Committee. Ought to pass with amendment, Vote 2-0. Senator D'Allesandro for the committee.

**Senate Ways and Means**

**March 20, 2003**

**2003-0928s**

**08/03**

**Amendment to SB 117-FN-A-LOCAL**

Amend the title of the bill by replacing it with the following:

**AN ACT** authorizing video lottery administered by a gaming oversight authority, and establishing a pharmacy benefit program.

Amend RSA 284-A:9, I as inserted by section 1 of the bill by deleting subparagraph (c).

Amend the bill by deleting section 12 and renumbering the original sections 13-22 to read as 12-21, respectively.

Amend the bill by inserting after section 20 the following and renumbering the original sections 21-22 to read as 22-23, respectively:

21 Pharmacy Benefit Program. The department of health and humans services shall seek a federal pharmacy plus waiver extending the existing Medicaid benefit package, pursuant to RSA 167, to eligible seniors over 65 years of age, not currently eligible for private coverage, with incomes less than 300 percent of the federal poverty level.

22 Appropriation. There is hereby appropriated a sum not to exceed \$6,317,672 to be matched by federal funds for each of the fiscal years ending June 30, 2004 and June 30, 2005 to the department of health and human services for the purposes of section 21 of this act. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

Amend the bill by replacing section 23 with the following:

**23 Effective Date.**

I. Sections 10-11 of this act shall take effect July 1, 2004.

II. Section 16-20 of this act shall take effect July 1, 2014.

III. The remainder of this act shall take effect July 1, 2003.

2003-0928s

## AMENDED ANALYSIS

This bill authorizes video lottery administered by a gaming oversight authority.

This bill also establishes a pharmacy benefit program for seniors.

SENATOR D'ALLESANDRO: Thank you Mr. President. I move ought to pass with amendment on SB 117. Senate Bill 117 establishes a Gaming Oversight Authority to administer Video Lottery Terminals (VLTs) at live dog and horse racing venues. The bill would produce an estimated \$199 million for the General Fund for the state of New Hampshire, \$8 million, for the municipalities where the machines are located and \$6.3 for the Department of Resources and Economic Development for tourism programs. In addition, the bill reduces the Business Profits Tax from 8.5 percent to 8 percent and reduces the Business Enterprise Tax from three-quarters of one percent to one-half of one percent. The committee amended the bill to include prescription drug coverage for an estimated 10,708 elderly citizens in New Hampshire with incomes less than 300 percent of the federal poverty level. New Hampshire had a long and profitable relationship with the racing industry. Indeed, at one point in our state's history the tracks provided almost 20 percent of general fund revenue. The horse and dog racing venues are again the ideal partners for our state's economic recovery, and the committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

Senator Gatsas Rule #42 on SB 117-FN-A-L.

**SB 138-FN**, clarifying the exemption from the interest and dividends tax for distributions from qualified tuition savings programs. Ways and Means Committee. Ought to pass, Vote 4-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you Mr. President. I move ought to pass on SB 138. Under the current tax law, distribution from New Hampshire's college tuition savings plan (called the UNIQUE College Investing Plan and the Fidelity Advisor 529 Plan) which are used to pay for higher education costs are exempt from tax. Senate Bill 138 would extend this exemption to distributions from any state-sponsored college savings plan that is qualified for federal tax benefits under section 529 of the Internal Revenue Code. Senate Bill 138 will provide freedom to New Hampshire parents to choose the state sponsored savings program that best suits their particular needs and will encourage more students to attend New Hampshire colleges and universities. It is important to note that the DRA has concluded that SB 138 would not have any material revenue impact and the committee unanimously recommends ought to pass. Thank you Mr. President.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 141-FN-A-L**, relative to fire service aid payments to the city of Concord and making an appropriation therefor. Ways and Means Committee. Inexpedient to legislate, Vote 3-1. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move that SB 141 be inexpedient to legislate. Senate Bill 141 would make annual payments of \$442,903 to the city of Concord beginning in fiscal 2004 for police and fire coverage to state departments and agencies. The state does currently provide over \$80,000 a year in fire service aid to the city of Concord and looking forward, the committee feels that an expenditure of this type is not possible within the limitations of the state budget. The committee recommends inexpedient to legislate. Thank you Mr. President.

SENATOR LARSEN: Thank you Mr. President. This must be my day. Senate Bill 141 is a bill that I introduced at the request of the city of Concord. It is also meant to hopefully, open your ears and concerns the cities need for reimbursement for emergency services which the city of Concord's taxpayers currently provide to state buildings across this city. We have documented that over \$440,000 worth of services are provided in emergency services to state buildings. There are 141 state buildings that Concord's taxpayers currently respond to if there is a need for an emergency response, either fire or police. We did some searching and found that the university, by contrast, treats this need very responsibly. The town of Durham provides...receives \$1.135 million for covering the fire service needs of the students and faculty in their 185 buildings. The town of Plymouth receives \$155,000 for its smaller town, and yet Concord has been locked at what is truly \$16,000 for reimbursement for fire service since 1985. People will say, you should be lucky to have state jobs here. We are lucky. But not everybody who works in a state office, who may have a heart attack or an emergency need is a Concord taxpayer and yet it is Concord's taxpayers who pay for that emergency medical service. It is Concord's taxpayers who pay for the fire truck to arrive and put out the prison warehouse fire. Those are Concord's taxpayers dollars paying for state fire needs and police needs. There is something wrong with this picture folks, and I hope that if it is not going to pass in a separate bill, that I can get the attention of the Senate Finance Committee to at least insert some recognition that since 1985, the costs of fire and service coverage to state buildings, has increased. I thank you for your time and I hope that each of you will remain sensitive to this issue as we work on the budget. Thank you.

SENATOR BARNES: Thank you Mr. President. Senator Larsen? This isn't a question, Senator Larsen. This has come up over the years that you have been here. Your predecessor, the honorable Susan McLane took the same stance. My comments are: that any time that the city is upset, I have already put it on the ballot in Raymond, and would be more than happy to take the state Capitol to Raymond. To talk about emergency services, eight years ago when I was lugged out of here in an ambulance because Delahunty was too cheap to take me over in his car, I got a bill for six hundred and something dollars. So the city of Concord didn't pay for lugging me two blocks to the hospital, my insurance paid for it, the city did not pay for that, the taxpayers of Concord didn't pay for that. As I walked out here for lunch today, I noticed all of those store owners and folks who pay the taxes here, those store owners pay taxes to the city. If it weren't for the state workers in here and the people that the state brings into this city, I am afraid that this Main Street would look something like the OK Corral Street. It would be kind of deserted and tumbleweed might be going down the street. So I think that the city of Concord should be mighty happy to have state government here, because I know that the town of Raymond would just love to have the Capital



moved 34 miles down the road. We would take that in a flash. If you want to put that in front of the Executive Council or your council with Concord, vote for it, and we will take it.

**Committee report of inexpedient to legislate is adopted.**

### **MOTION TO REMOVE FROM THE TABLE**

Senator Gatsas moved to have **SB 96-FN**, establishing a pharmacy assistance program for seniors and disabled persons, taken off the table.

**Recess.**

**Out of recess.**

**Adopted.**

**SB 96-FN**, establishing a pharmacy assistance program for seniors and disabled persons.

**Question is on the adoption of the committee report of rerefer.**

**Motion failed.**

Senator Gatsas moved ought to pass.

Senator Gatsas offered a floor amendment.

**Sen. Gatsas, Dist. 16**

**March 27, 2003**

**2003-1021s**

**01/09**

### **Floor Amendment to SB 96-FN**

Amend the title of the bill by replacing it with the following:

AN ACT establishing a pharmacy discount program for seniors and disabled persons and making an appropriation therefor.

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; Pharmacy Discount Program. Amend RSA 167 by inserting after section 97 the following new subdivision:

#### **Pharmacy Discount Program**

167:98 Program Established. There is hereby established the pharmacy discount program for New Hampshire seniors and disabled persons below 200 percent of the federal poverty level. The department is hereby authorized to administer this program.

167:99 Definitions. In this subdivision:

I. "Department" means the department of health and human services.

II. "Drugs" means all prescription drugs that have been approved as safe and effective by the federal Food and Drug Administration or are otherwise legally marketed in the United States, including insulin, insulin syringes, and insulin needles.

III. "Eligible person" means a resident of New Hampshire who:

(a) Is 65 years of age or older; or

(b) Is 18 years of age or older and has been determined to be "disabled" by the Social Security Administration; and

(c) Has a gross annual household income of not more than 200 percent of the federal poverty level. For the purposes of determining eligibility under this section, annual income shall not include the cost of Medicare Part B premiums unless the cost of the premium is paid by the department.

IV. "Enrollee" means an eligible individual who receives benefits under the pharmacy assistance program established by this subdivision.

V. "Program" means the pharmacy discount program established under this subdivision.

167:100 Administration of the Program.

I. The department of health and human services shall administer the pharmacy discount program for eligible persons who lack coverage for necessary prescription drugs. Enrollment in the program shall be voluntary.

II. The department shall verify the income of applicants for the program according to the most recent income tax returns for the applicant. If an applicant is not required to pay income tax, the department shall verify the applicant's income through submission of monthly checks received by said applicant.

III. The department shall conduct outreach marketing efforts to ensure that eligible senior citizens and people with disabilities are aware of the availability of the program, to provide eligible individuals with the guidelines of the program, and to maximize enrollment in the program.

167:101 Federal Waiver. The pharmacy discount program authorized by this subdivision shall be implemented under a section 1115 Medicaid waiver, wherein the state makes a payment toward the cost of the drugs dispensed to individuals enrolled in this program of at least 2 percent of the cost of each prescription and refill, consistent with the appropriation for the program established in this subdivision.

167:102 Rulemaking. The department shall adopt rules, pursuant to RSA 541-A, in order to implement the program established in this subdivision.

167:103 Report. The department shall make a report on or before January 1 each year, commencing January 1, 2005, relative to the program established in this subdivision to the senate president, the speaker of the house of representatives, and the governor.

2 Appropriation. There is hereby appropriated the sum of \$1,000,000 for the fiscal year ending June 30, 2004, and the sum of \$1,000,000 for the fiscal year ending June 30, 2005, to the department of health and human services to implement the pharmacy discount program established by this act. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

3 Effective Date. This act shall take effect on January 1, 2004.

**2003-1021s**

**AMENDED ANALYSIS**

This bill requires the department of health and human services to establish a pharmacy discount program for certain seniors and disabled persons.

SENATOR GATSAS: I rise to offer a floor amendment. After listening to a study committee for two years on prescription drugs, I think that I started the committee with Senator Hollingworth and finished it with Senator Larsen. After two years, we have an amendment before us that is very similar to the 1115 waiver discount program that the state of Maine has, which they won in the first circuit federal court and has been appealed. What this discount program does is it allows at least two percent of the costs of each prescription and refill consistent with the appropriation that the program established in the subdivision. The appropriation here is \$1 million 2004 and \$1 million in 2005. I think that once we get this to Finance we might be able to adjust that because the ef-

fective date of the passage of this bill is not until January 2004. So I think that maybe we can adjust that first \$1 million to only \$500,000 because we are only in a six month period in the first year of the passage. So with that I move ought to pass with amendment.

SENATOR BOYCE: I rise against the amendment. Everybody says that they want to do something with prescription drugs. This still relies on that Medicaid Waiver that is still in court and still will be in court with this. Even if this does go into effect next year, the two percent of the cost of the prescription...if I've got a \$100 prescription that I have to get, that is \$2. This is meaningless. You know, if we really want to do something, this is not it. Thank you.

SENATOR ESTABROOK: Thank you Mr. President. Senator Gatsas, isn't it true that the two percent state contribution cited in the bill is in addition to the discount that would be provided through the federal program?

SENATOR GATSAS: Absolutely.

SENATOR ESTABROOK: Thank you.

SENATOR BELOW: Thank you Mr. President. Senator Gatsas, so is it the point that having the state participate makes the purchaser eligible for reduced price, according to some federally agreed upon price list or something like that? The discount comes about... how does the discount come about?

SENATOR GATSAS: The discount comes about directly on each prescription and refill, based on a discount card.

SENATOR BELOW: Okay.

SENATOR BARNES: Thank you. Senator Gatsas, during your study program on these prescription drugs, wasn't there some talk of several of the northeastern states, including New York and Pennsylvania coming together so that we could buy in quantity to get the price of drugs down? Wasn't that part of the discussion at one time?

SENATOR GATSAS: Senator Barnes, we had discussion for two years that ranged from no discounts to paying for prescriptions at 100 percent, so I can tell you that was part of the discussion.

SENATOR BARNES: Thank you.

SENATOR LARSEN: I just rise to support the amendment, particularly in the sense that it gets a prescription drug plan into the Senate Finance Committee for further discussion and at that point, we will discuss all of the details of this plan as well as others and see what we can do.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Green.**

**Seconded by Senator Sapareto.**

**The following Senators voted Yes: Gallus, Johnson, Below, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Estabrook, Morse, Cohen.**

**The following Senators voted No: Kenney, Boyce.**

**Yeas: 20 - Nays: 2**

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 144-FN**, relative to the lease agreement between the department of regional community-technical colleges and Pease development authority. Ways and Means Committee. Ought to pass with amendment, Vote 4-0. Senator D'Allesandro for the committee.

**Senate Ways and Means**

**March 20, 2003**

**2003-0931s**

**08/03**

### **Amendment to SB 144-FN**

Amend the bill by replacing section 1 with the following:

1 Lease Agreement Required; Pease Development Authority; Department of Regional Community-Technical Colleges. Amend 2001, 158:67 to read as follows:

158:67 Lease Agreement Required; Pease Development Authority; Department of Regional Community-Technical Colleges. The department of regional community-technical colleges and Pease development authority shall enter into a lease agreement in which the department shall occupy the first floor, consisting of 71,243 square feet, of 320 Corporate Drive in Portsmouth. In exchange, the state shall reduce by [~~\$1,068,644~~] **\$1,133,724** per year, starting with the commencement of the lease on July 1, [~~2001~~] **2003**, Pease development authority's debt owed to the state relative to start-up funding costs under RSA [~~12-G:27-b~~] **12-G:33** through [~~12-G:27-d~~] **12-G:35**; 1991, 355:110, as amended by 1992, 260:11; 1992, 260:12, as amended by 1993, 358:3; 1994, 415:1; and 1995, 307:10. *Commencing on July 1, 2004 and on each July 1 thereafter, the annual debt reduction shall be increased by the lesser of the consumer price index or 3 percent for that year, not to exceed 12 percent in any 5-year period. In this section, "consumer price index" means the Consumer Price Index for All Urban Consumers applicable to the Boston area (all items 1982-1984=100) published by the United States Department of Labor, Bureau of Labor Statistics.* The lease term shall be [2] 8 years or until such time as the debt owed to the state relative to the authority's start-up funding costs has been exhausted. [~~The lease may be extended subject to the approval of the capital budget overview committee and the governor and council.~~] *If the department of regional community-technical colleges does not acquire property insurance for the leased premises, the Pease development authority may elect to obtain property insurance coverage for 320 Corporate Drive and the state shall reduce annually the authority's debt owed to the state relative to start-up funding costs, as described in this section, by an additional amount equal to the pro-rata allocation of the insurance costs attributable to the leased premises based on square footage.*

**2003-0931s**

### **AMENDED ANALYSIS**

This bill extends the term of the lease agreement between the department of regional community-technical colleges and Pease development authority from 2 years to 8 years, modifies the debt reduction corre-

sponding to the lease agreement, and authorizes the Pease development authority to receive a further debt reduction for obtaining certain property insurance.

SENATOR D'ALLESANDRO: Thank you Mr. President. I move ought to pass with amendment on SB 144. Senate Bill 144 is an extension of a two-year agreement between the Pease Development Authority and the Community Technical College that will expire this June 30. The agreement treats the rental cost of the property the college uses at Pease as credit against a bond debt Pease owes the state. The Community Technical College's property at Pease houses the Emerging Technologies Center which supports hi-tech training programs **TAPE CHANGE** and Pease tenants technology needs. The Center has been extremely effective at securing federal grants and partnering with networks of hi-tech incubators because of its location. The committee amended the bill by reducing the terms of the lease agreement from 10 years, as introduced, to eight years. The committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**SB 208-FN**, establishing a property tax cap and abatement program. Ways and Means Committee. Rerefer to committee, Vote 4-0. Senator Clegg for the committee.

### **MOTION TO TABLE**

Senator Clegg moved to have **SB 208-FN** laid on the table.

**Adopted.**

### **LAIID ON THE TABLE**

**SB 208-FN**, establishing a property tax cap and abatement program.

**SB 213**, allowing municipalities to adopt a volunteer firefighter property tax credit. Ways and Means Committee. Inexpedient to legislate, Vote 3-1. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move that SB 213 be inexpedient to legislate. The bill addresses the statewide problem that volunteer fire departments are having in attracting and retraining firefighters willing to sacrifice their time and take risks associated with the job. Although SB 213 would provide a property tax credit as an incentive to...and whoever wrote this put "young" in here and I don't think that it is always "young men and women" to join and stay with a volunteer fire departments. The bill would only benefit those who own their own homes. The committee feels that this creates a potential tax problem for the firefighters and also the municipalities and that while it is commendable that the sponsor of this bill wanted to provide this benefit to the firefighters, we think that there are more problems created than solved and recommend inexpedient to legislate. Thank you Mr. President.

SENATOR BELOW: Thank you Mr. President. While I am sponsor of this bill, I would defeat the inexpedient to legislate recommendation. It is important to note that the bill simply provides a local option, it doesn't mandate any tax credit, it simply allows a municipality through a vote of their legislative body, if they wanted to, to adopt a tax credit for vol-

unteer firefighters and to establish the requirements that a volunteer would have to meet to qualify for the credit. A lot of small towns are having a difficult time recruiting and retraining an adequate number of volunteers. I think this is simply a way to recognize the contribution that volunteer firefighters make in allowing local options. All of our other local option tax credits only apply to property taxes, so it is consistent with what we do in other areas. Thank you.

**Question is on the committee report of inexpedient to legislate. A roll call was requested by Senator Below.**

**Seconded by Senator Estabrook.**

**The following Senators voted Yes: Gallus, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Morse.**

**The following Senators voted No: Kenney, Below, Foster, Larsen, Martel, Sapareto, D'Allesandro, Estabrook, Cohen.**

**Yeas: 12 - Nays: 9**

**Committee report of inexpedient to legislate is adopted.**

Senator Johnson is excused for the vote of SB 213.

**SB 224-FN-A-L**, relative to the education property tax and needs-based targeted education aid and reducing the rates of the business enterprise tax and the business profits tax. Ways and Means Committee. Rerefer to committee, Vote 4-0. Senator Gallus for the committee.

#### **MOTION TO TABLE**

Senator Gallus moved to have **SB 224-FN-A-L** laid on the table.

**Adopted.**

#### **LAID ON THE TABLE**

**SB 224-FN-A-L**, relative to the education property tax and needs-based targeted education aid and reducing the rates of the business enterprise tax and the business profits tax.

**SB 79-FN-L**, relative to animal cruelty. Wildlife and Recreation Committee. Ought to pass with amendment, Vote 4-0. Senator Roberge for the committee.

#### **Wildlife and Recreation**

**March 19, 2003**

**2003-0860s**

**08/10**

#### **Amendment to SB 79-FN-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 Animal Cruelty. RSA 644:8, IV is repealed and reenacted to read as follows:

IV. (a) In addition to being guilty of crimes as provided in paragraphs III and III-a, any person charged with cruelty to animals may have his or her animal seized by an appropriate law enforcement officer. Courts shall give cases in which animals have been confiscated by an arresting officer priority on the court calendar.

(b) The owner or custodian of any animal that has been seized pursuant to this section or 644:8-a, or because of investigation of charges of cruelty to animals or for exhibition of fighting animals shall have his or her animal held pursuant to RSA 595-A:6, and as provided as follows:

(1) The seizing officer shall notify the owner of the seized animals of the provisions of this section by posting written notice at the location where the animal was seized or by leaving it with a person of suitable age and maturity residing at that location within 24 hours of the seizure. This notice shall provide the type and number of animals seized, the name of the officer, the time and date taken, the reason it was taken and any other relevant information.

(2) The seizing officer shall appoint as custodian a licensed veterinarian or other animal care center as defined by RSA 437:18 to care for any such animal. The custodian shall retain custody of the animal in accordance with this section.

(3) The custodian shall document by affidavit the animal's condition within 24 hours after posting of the notice of seizure.

(4) The seized animal shall be held by the custodian for a period of 15 days, including weekends and holidays, after such notice of seizure is given, or until a show cause hearing is held. Thereafter, a person who claims an interest in such animal but has not posted bond in accordance with subparagraph (c), the animal may be disposed of as provided in RSA 595-A:6.

(c) A person claiming an interest in any seized animal may prevent the disposition of the animal pursuant to subparagraph (b)(4) by posting a bond with the court within 14 days after the show cause hearing, in an amount sufficient to secure payment for all reasonable projected costs for the boarding and treatment for any confiscated animal for a 30 day period commencing on the date of initial seizure. Such bond shall not prevent the department, agency, humane society, or other custodian of the animal from disposing of the animal in accordance with subparagraph (b) at the end of the 30 day period covered by the bond, unless the person claiming an interest posts an additional bond for such reasonable expenses for an additional 30 day period. In addition, such bond shall not prevent disposition of the animal for humane purposes at any time, in accordance with subparagraph (f). The department, agency, humane society or other custodian of the animal as authorized by the court and on the condition of the animal, shall determine the amount of the bond after examination by a licensed veterinarian.

(d) Upon a person's conviction pursuant to this section or RSA 644:8-a, the court may:

(1) Order the forfeiture and final determination of the custody of any animal, the forfeiture of the posted bond.

(2) Order the payment of any reasonable or additional costs incurred in the boarding or veterinary treatment of any seized animal prior to its disposition.

(3) Prohibit any person convicted of animal cruelty from having future ownership or custody of other animals for any period of time the court deems reasonable or impose any other reasonable restrictions on the person's future ownership or custody of animals as necessary for the protection of the animals.

(e) Upon a person's acquittal or final discharge without conviction, the court shall order the delivery of any animals held in custody to the owner and order the return of any bond posted pursuant to subparagraph (c).

(f) Nothing in this section shall prevent the destruction of any animal at any time, whether or not a bond is posted, if the animal is seized in accordance with RSA 644:8-a, or if a licensed veterinarian determines that the animal is not likely to survive or is suffering. In such instances,

the court may order the return of any bond posted, less reasonable costs, unless the person is acquitted, the full amount of the bond shall be returned.

(g) If a person appeals his or her conviction and any confiscated animal remains in the care of the custodian pending disposition of the appeal, the trial court shall require any appellant to post or continue to post a bond as stated in subparagraph (c).

(h) Any person who knowingly makes a false complaint or statement of animal cruelty against another, shall be liable for all custodial costs incurred on behalf of the seized animals, and shall be guilty of a violation and fined not less than \$500.

2 Fighting Animals. Amend RSA 644:8-a to read as follows:

644:8-a Exhibitions of Fighting Animals.

I. No person shall keep or train any bird, dog, or other animal, with the ~~[intent]~~ **purpose** that it shall be engaged or used in an exhibition of fighting, or shall establish or promote an exhibition of the fighting thereof. Whoever violates the provisions of this paragraph shall be guilty of a class B felony ~~[in the case of dogs, and a misdemeanor in the case of birds or other animals].~~

II. Any person present at any place or building when preparations are being made for an exhibition of such fighting with intent to be present at such exhibition, or present at, aiding in or contributing to, such an exhibition, shall be guilty of a class B felony ~~[in the case of dogs, and a misdemeanor in the case of birds or other animals].~~

III. All animals so kept or trained by a person charged with violating the provisions of paragraph I may be seized by the arresting officer, **pursuant to RSA 595-A:6 and RSA 644:8** upon said person's conviction, said animals may, at the discretion of the court, be destroyed in a humane manner by a licensed veterinarian. ~~[The costs, if any, incurred in boarding the animals, pending disposition of the case, and in disposing of the animals, upon a conviction of said person for violating paragraph I, shall be borne by the person so convicted.]~~

3 Effective Date. This act shall take effect January 1, 2004.

2003-0860s

### AMENDED ANALYSIS

This bill requires the owner of animals seized under cruelty charges to post a bond for their care and support, and such bond shall be returned upon acquittal.

This bill also makes any person who makes a false complaint or statement of cruelty liable for custodial costs and guilty of a violation.

SENATOR ROBERGE: Mr. President. I have a floor amendment that really takes the place of all the previous amendments and narrows the scope down to just fighting dogs and birds. It says, "no person shall keep, breed or train any bird, dog or other animal with the intent that it or its offspring shall be engaged or used in an exhibition of fighting, or shall establish or promote an exhibition of the fighting thereof. Whoever violates the provisions of this paragraph shall be guilty of a class B felony. It used to be a felony for dogs and a misdemeanor for birds, now it is a felony for both. "Any person present at any place or building when preparations are being made for an exhibition of such fighting with intent to be present at such exhibition, or present at, aiding in or contributing to such an exhibition, shall be guilty of a class B felony." It is already a crime for fighting animals. "All animals so kept, bred, or trained by a



person charged with violating the provisions of paragraph I may be seized by the arresting officer, pursuant to RSA 595-A:6 and RSA 644:8 upon said person's conviction, said animals may, at the discretion of the court, be destroyed in a humane manner by a licensed veterinarian." Sometimes these animals are very badly injured and in very tough shape. If the veterinarian feels that they are probably likely to succumb to their injuries, then that is what is going to happen to them. "The costs, if any, incurred in boarding the animals, pending disposition of the case, and in disposing of the animals, upon a conviction of said person for violating paragraph I, shall be borne by the person so convicted."

SENATOR EATON (In the Chair): Thank you Senator Roberge. Is that the amendment that you just spoke about?

SENATOR ROBERGE: This is the amendment that I just read.

SENATOR EATON (In the Chair): Okay. We are going to vote on the bill first and the amendment has been explained, so we will do that after. Thank you.

**Question is on the adoption of the committee amendment.**

**Amendment failed.**

Senator Roberge offered a floor amendment.

Sen. Roberge, Dist. 9

**March 21, 2003**

**2003-0950s**

**08/10**

### **Floor Amendment to SB 79-FN-LOCAL**

Amend the title of the bill by replacing it with the following:

AN ACT relative to penalties for the exhibition of fighting animals.

Amend the bill by replacing all after the enacting clause with the following:

1 Fighting Animals. Amend RSA 644:8-a to read as follows:

644:8-a Exhibitions of Fighting Animals.

I. No person shall keep, **breed**, or train any bird, dog, or other animal, with the intent that it **or its offspring** shall be engaged or used in an exhibition of fighting, or shall establish or promote an exhibition of the fighting thereof. Whoever violates the provisions of this paragraph shall be guilty of a class B felony ~~[in the case of dogs, and a misdemeanor in the case of birds or other animals]~~.

II. Any person present at any place or building when preparations are being made for an exhibition of such fighting with intent to be present at such exhibition, or present at, aiding in or contributing to, such an exhibition, shall be guilty of a class B felony ~~[in the case of dogs, and a misdemeanor in the case of birds or other animals]~~.

III. All animals so kept, **bred**, or trained by a person charged with violating the provisions of paragraph I may be seized by the arresting officer, **pursuant to RSA 595-A:6 and RSA 644:8** upon said person's conviction, said animals may, at the discretion of the court, be destroyed in a humane manner by a licensed veterinarian. The costs, if any, incurred in boarding the animals, pending disposition of the case, and in disposing of the animals, upon a conviction of said person for violating paragraph I, shall be borne by the person so convicted.

2 Effective Date. This act shall take effect January 1, 2004.

**2003-0950s****AMENDED ANALYSIS**

This bill increases penalties for the keeping, training and breeding of animals for exhibition as fighting animals.

**SENATOR ROBERGE:** In the hearing, everybody agreed that this amendment was as fine as we could get it and everyone agreed that they could agree on this amendment, the breeders, the shelter people, everybody who came.

**SENATOR D'ALLESANDRO:** Thank you Mr. President. I rise really just to commend Senator Roberge. I know that this has been an elongated process and I appreciate her due diligence in getting this squared away, so thank you very much.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 128**, relative to the treatment of horses. Wildlife and Recreation Committee. Ought to pass, Vote 5-0. Senator Sapareto for the committee.

**SENATOR SAPARETO:** Thank you Mr. President. I guess that I am the dog that got this one. I move HB 128 ought to pass. This bill was drafted at the request of the Department of Agriculture to make changes regarding the regulation of the care, sheltering and feeding of horses. It will also require a veterinarian to be present to determine animal cruelty in efforts to protect the horse and its owner. House Bill 128 has the support of the state Veterinarian and the Farm Bureau. The Wildlife Committee recommends that HB 128 ought to pass.

**Adopted.**

**Ordered to third reading.**

**HCR 1**, endorsing the Canine Good Citizen Program. Wildlife and Recreation Committee. Ought to pass, Vote 4-0. Senator Sapareto for the committee.

**SENATOR SAPARETO:** Thank you Mr. President. I move HCR 1 ought to pass. This resolution endorses the Canine Good Citizen Program sponsored by the American Kennel Club. The program's goal is to create a better public image of dogs by increased interaction between dogs and the general public. Dog owners will be encouraged to apply to the program and use it as an opportunity to become better acquainted with their animals and learn how to properly maintain them in a town setting. Supporters of the resolution feel that the program will create more responsible pet owners, reduce the number of aggressive animal incidents, and possibly lower insurance rates. The Wildlife Committee recommends HCR 1 ought to pass. Thank you.

**SENATOR BARNES:** Senator Sapareto, on page seven of this piece of legislation and I want to be serious about this, but "whereas the American Kennel Club's Canine Good Citizen Program identifies and officially recognizes those dogs who behave as members in good standing with their community". What does that mean and who comes out and gives this award out to my dog?

**SENATOR SAPARETO:** Thank you Senator Barnes.

SENATOR BARNES: If he doesn't poop on my neighbor's lawn, is he a good neighbor or what?

SENATOR SAPARETO: Well Senator, having met numerous constituents on the campaign trail who I am very pleased were good citizens, I can tell you that this award, which looks like this, and hopefully that answers your question.

SENATOR BARNES: There is actually an award for this?

SENATOR SAPARETO: There is actually an award for this, Senator.

SENATOR BARNES: You have got to be kidding? I heard that there is a test. Do you want to read the test?

SENATOR SAPARETO: I will leave that to you Senator Barnes. Feel free to read it.

SENATOR BARNES: Would you believe that "accepting a friendly stranger". Who does these things?

**Adopted.**

**Ordered to third reading.**

### **RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills ordered to third reading be by this resolution read a third time and all titles be the same as adopted, and that they be passed at the present time

**Adopted.**

### **LATE SESSION**

#### **Third Reading and Final Passage**

**SB 33-FN**, establishing a putative fathers' registry in the department of health and human services.

**SB 34**, relative to independent living retirement communities.

**SB 45**, relative to property tax exemptions and credits for the elderly, veterans, and the disabled, and allowing municipalities to adopt an optional date for filing exemptions.

**SB 66-FN-A-L**, limiting the exemption from the meals and rooms tax for sales of alcoholic beverages by voluntary nonprofit organizations operating under one-day licenses from the liquor commission.

**SB 71-FN-A**, establishing a committee to study improving access, affordability, and alternatives in health insurance for New Hampshire consumers.

**SB 73**, establishing a committee to study establishing enterprise zones in economically deprived or challenged communities, and relative to the Black Brook Park Tax Increment Finance District.

**SB 79-FN-L**, relative to penalties for the exhibition of fighting animals.

**SB 87**, establishing a committee to study setback requirements for septage, biosolids, and short paper fibers, and extending the temporary use of septage, biosolids, and short paper fiber by certain persons.

**SB 94-FN**, requiring criminal conviction record checks for employees working in long-term care facilities and in home health care and for applicants for a license from the board of nursing.

**SB 97**, limiting the liability of firefighters working for certain private firefighting units.

**HB 104-FN**, implementing procedures for a hospital or safe haven to assume temporary care and control of an abandoned child and creating an exception to the crime of endangering the welfare of a child.

**SB 122**, relative to the regulation of first mortgage brokers.

**HB 128**, relative to the treatment of horses.

**SB 130-FN-L**, relative to county departments of corrections.

**SB 134**, relative to the regulation of real estate brokers by the real estate commission.

**SB 170**, relative to Public Service of New Hampshire.

**SB 178**, relative to guaranty funds.

**SB 179-FN-A**, relative to positions in the banking department.

**SB 180**, making certain changes in the banking laws.

**SB 181**, relative to investigations by and license revocation appeals to the board of trust company incorporation. Banks Committee. Ought to pass, Vote 5-0. Senator Barnes for the committee.

**SB 197-FN**, relative to extended unemployment benefits and making an appropriation therefor.

**SB 227**, relative to the board of occupational therapy, the board of respiratory care practice, the board of speech-language therapists, the board of athletic trainers practice, the board of physical therapy practice, and the board of directors of the office of licensed allied health professionals, and relative to the board of podiatry.

**HCR 1**, endorsing the Canine Good Citizen Program.

**SCR 3**, urging maintenance of funding for the Low Income Home Energy Assistance Program

## ANNOUNCEMENTS

### RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, receiving House Messages, and receiving Enrolled Bill Reports and Amendments, and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

**In recess to the Call of the Chair.**

**Out of Recess.**

### HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 179**, establishing a committee to study enhancement of laws relating to vehicle pursuits.

**HB 180**, relative to proceedings for termination of parental rights.

**HB 198**, relative to the police powers of law enforcement officers called to respond to incidents in other jurisdictions.

**HB 206**, relative to filing of complaints for violation-level offenses.

**HB 244**, establishing a committee to study landowner liability for owners providing public access to snowmobile trails.

**INTRODUCTION OF HOUSE BILLS**

Senator Clegg offered the following Resolution:

**RESOLVED**, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **179 - 244** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

**First and Second Reading and Referral**

**HB 179**, establishing a committee to study enhancement of laws relating to vehicle pursuits. (Transportation)

**HB 180**, relative to proceedings for termination of parental rights. (Judiciary)

**HB 198**, relative to the police powers of law enforcement officers called to respond to incidents in other jurisdictions. (Judiciary)

**HB 206**, relative to filing of complaints for violation-level offenses. (Judiciary)

**HB 244**, establishing a committee to study landowner liability for owners providing public access to snowmobile trails. (Wildlife and Recreation)

**HOUSE MESSAGE**

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 57**, relative to the use of inhalers by pupils and campers with asthma.

**HB 59**, relative to court reporting.

**HB 92**, relative to the use of epinephrine auto-injectors by pupils and campers with severe allergies.

**HB 105**, relative to sexual assaults committed by corrections officers, probation and parole officers, and juvenile probation and parole officers against individuals under their supervision.

**HB 195**, prohibiting all part-time district court judges and district court clerks from practicing law in the district courts.

**INTRODUCTION OF HOUSE BILLS**

Senator Clegg offered the following Resolution:

**RESOLVED**, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **57 - 195** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

**First and Second Reading and Referral**

**HB 57**, relative to the use of inhalers by pupils and campers with asthma. (Public Institutions, Health and Human Services)

**HB 59**, relative to court reporting. (Judiciary)

**HB 92**, relative to the use of epinephrine auto-injectors by pupils and campers with severe allergies. (Public Institutions, Health and Human Services)

**HB 105**, relative to sexual assaults committed by corrections officers, probation and parole officers, and juvenile probation and parole officers against individuals under their supervision. (Judiciary)

**HB 195**, prohibiting all part-time district court judges and district court clerks from practicing law in the district courts. (Judiciary)

### HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 77**, establishing a committee to study the process of de novo appeals from the district courts.

**HB 204**, relative to venue in juvenile proceedings.

### INTRODUCTION OF HOUSE BILLS

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **77 - 204** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 77**, establishing a committee to study the process of de novo appeals from the district courts. (Judiciary)

**HB 204**, relative to venue in juvenile proceedings. (Judiciary)

### HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 212**, defining "terrorize" for the purpose of criminal threatening.

**HB 278**, relative to certain acts of sexual assault.

**HB 393**, extending the reporting dates for certain study committees.

### INTRODUCTION OF HOUSE BILLS

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **212 - 393** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 212**, defining "terrorize" for the purpose of criminal threatening. (Judiciary)

**HB 278**, relative to certain acts of sexual assault. (Judiciary)

**HB 393**, extending the reporting dates for certain study committees. (Public Institutions, Health and Human Services)

### HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 186**, relative to the effect of divorce or annulment upon trusts.

**HB 196**, establishing a commission to study means to integrate services for people with co-occurring disorders.

**HB 225**, extending the task force on deafness and hearing loss and changing the task force's membership and duties.

**HB 240**, establishing a committee to study ways to prevent suicide among young people in New Hampshire.

**HCR 3**, calling on the President and the Congress to fully fund the federal government's share of special education services in public elementary and secondary schools in the United States under the Individuals with Disabilities Education Act.

### INTRODUCTION OF HOUSE BILLS

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **186 – HCR 3** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 186**, relative to the effect of divorce or annulment upon trusts. (Banks)

**HB 196**, establishing a commission to study means to integrate services for people with co-occurring disorders. (Public Institutions, Health and Human Services)

**HB 225**, extending the task force on deafness and hearing loss and changing the task force's membership and duties. (Public Institutions, Health and Human Services)

**HB 240**, establishing a committee to study ways to prevent suicide among young people in New Hampshire. (Public Institutions, Health and Human Services)

**HCR 3**, calling on the President and the Congress to fully fund the federal government's share of special education services in public elementary and secondary schools in the United States under the Individuals with Disabilities Education Act. (Education)

### LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*April 3, 2003*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good morning! Last evening I spoke with the parents of two young Marines who are a part of my parish family. As far as their moms and dads know, this morning David is out in the Persian Gulf, aboard the battleship Iwo Jima, waiting to be sent ashore, and Brad is somewhere very near to Baghdad right now, as a part of the 1<sup>st</sup> Marine Division. Even though these young men and their parents are Senator Larsen's constituents, they are a part of your constituency and your family as well – and so are all the others they represent. Let their service far away lend perspective to your service here in this special place. You are fighting budget battles, you are having gambling skirmishes and occasionally you

lob verbal bombs back and forth between parties. That is all part of your calling and it's okay – but never, ever forget that, unlike my young parishioners, your battles are about ideas and they should never be allowed to injure anyone as you tussle. My Marine friends face dangerous opposing army as they fight; but with you it is different. You all belong to the same army, in fact, to the same unit – our unit. Hold that perspective – for Brad, David, and their parents need you, too.

Let us pray:

*O God, in these times when it is hard to know how best to pray, give to our inarticulate lips words that heal and do not harm; fill to overflowing our worrying hearts with courageous comfort, and take our halting and unsteady steps and turn them into brave actions that result in respect, justice, compassion and, at the end, Your peace. Amen.*

Senator O'Hearn led the Pledge of Allegiance.

### INTRODUCTION OF GUESTS

SENATOR EATON (RULE #44): I just want to say that last week Senator Johnson had to leave the Chamber here early. He called Jeanette, his wife, to let her know that he was going to be late for a meeting. She wanted to know how late? So he told her and she said, "I hate to tell you, but you need to be back here because you are receiving the award for the meeting that you are coming to." So I just wanted to congratulate Senator Johnson, who would not have known that, other than him having to leave here early, that he received the Norm Marsh Award. It is for his efforts for economic development and working with the communities in his region.

SENATOR ROBERGE (RULE #44): Since January we have been meeting in this Chamber to do both the peoples work and honor the granite staters who have made a tremendous contribution to New Hampshire. This morning, however, I want to take a moment to honor one of our own because April 3, 2003 is truly a milestone in his life. At a time when there is uncertainty, both at home and abroad, it is reassuring to know that some people and institutions can do, and do, the test of time. Sixty years ago, in 1943 WWII was underway. It is time for Americans like our brave colleague to defend our country, then come home again and get on with the next chapter of their lives. To the future Senator from district 2, that meant marrying his lovely bride Jeanette Bowsier from Melrose, Massachusetts. Now two children and five grandchildren and one great grandchild later, it seems only fitting that Carl and Jeanette Johnson are able to look back on six decades of marriage and celebrate today, what is known as their "Diamond Anniversary". Our President Pro Tem, the distinguished gentleman from Meredith, and our friend, Senator Johnson, I say congratulations for obtaining something that only true love and commitment can accomplish.

SENATOR JOHNSON (RULE #44): I just want to say that Jeanette has been a wonderful partner and obviously spending 12 years down here has taken a part of her life, but she has joined right in and a lot of you know that she is know as "Mrs. Senator" down here in the State House. Thank you very, very much. I really appreciate it.

SENATOR BARNES: Senator Johnson, I understand that up in your neck of the woods that she is called the 25<sup>th</sup> Senator, but she is also called "saint". Is that correct, having served with you for a number of years I can understand why that title has been bestowed upon her.

SENATOR JOHNSON: That is correct.



**COMMITTEE REPORTS**

**SB 72**, relative to the regulation of title loans and payday loans. Banks Committee. Ought to pass with amendment, Vote 3-0. Senator Flanders for the committee.

**Banks**

**March 26, 2003**

**2003-0997s**

**05/10**

**Amendment to SB 72**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to the regulation of small loans, title loans, and payday loans.

Amend the bill by replacing all after the enacting clause with the following:

1 Regulation of Small Loans, Title Loans, and Payday Loans. RSA 399-A is repealed and reenacted to read as follows:

**CHAPTER 399-A****REGULATION OF SMALL LOANS, TITLE LOANS, AND PAYDAY LOANS**

**399-A:1 Definitions.** In this chapter:

I. "Check" means a draft drawn on the account of an individual or individuals at a depository institution.

II. "Closed-end loan" means a loan other than an open-end loan.

III. "Commissioner" means the bank commissioner.

IV. "Engaged in the business of making title loans" means that at least 10 percent of all loans made by the lender are title loans.

V. "Financial institution" means a bank, savings institution, credit union, or trust company.

VI. "License" means the authority to do business issued by the commissioner under the provisions of this chapter.

VII. "Licensee" means a person to whom one or more licenses have been issued under this chapter.

VIII. "Lender" means individuals, corporations, associations, firms, partnerships, limited liability companies, and joint stock companies or other forms of organizations that lend money or give credit temporarily on condition that the amount borrowed be returned, usually with an interest fee. "Lender" shall not include a financial institution.

IX. "Open-end loan" means an open-end credit arrangement pursuant to which a creditor may permit a borrower from time to time to obtain loans from the creditor pursuant to RSA 358-K:1, XI.

X. "Payday loan" means a small, short-maturity loan on the security of:

(a) A check;

(b) Any form of assignment of an interest in the account of an individual or individuals at a depository institution; or

(c) Any form of assignment of income payable to an individual or individuals.

XI. "Payday loan lender" means a person engaged in the business of making payday loans.

XII. "Person" means any individual, firm, voluntary association, joint-stock company, incorporated society, partnership, association, trust, corporation, limited liability company or legal or commercial entity or group of individuals however organized.

XIII. "Principal" means any person who, directly or indirectly, owns or controls:

(a) Ten percent or more of the outstanding stock of a stock corporation; or

(b) Ten percent or greater interest in a nonstock corporation or a limited liability company.

XIV. "Small loan" means a closed-end loan in the amount of \$10,000 or less or an open-end loan with a line of credit of \$10,000 or less, and where the lender contracts for, exacts or receives, directly or indirectly, in connection with any such loan any charges, whether for interest, compensation, brokerage, endorsement fees, consideration, expense or otherwise, which in the aggregate are greater than 10 percent per annum.

XV. "Small loan lender" means any person engaged in the business of making small loans.

XVI. "Title loan" means a loan, other than a purchase money loan:

(a)(1) Secured by the title to a motor vehicle;

(2) Made for a period of 60 days or less;

(3) With a single payment payoff; and

(4) Made by a lender in the business of making title loans; or

(b) That is secured, substantially equivalent to a title loan, and designated as a title loan by rule or order of the commissioner.

XVII. "Title loan lender" means a person engaged in the business of making title loans.

#### 399-A:2 License Required.

I. No person shall engage in the business of making small loans, title loans or payday loans, without first obtaining a license from the commissioner as provided in this chapter.

II. Each such license shall terminate on December 31st. Each license shall remain in full force and effect until surrendered, revoked, suspended, or terminated.

III. This chapter shall not apply to any person lawfully engaged in business as permitted by the laws of this state or of the United States relative to banks, trust companies, insurance companies, savings or building and loan associations, credit unions or to loans made by them, nor shall this chapter apply to any person engaged solely in the business of making loans for educational purposes or to the loans made by such persons, nor shall it apply to any person engaged in the business of second mortgage loans in accordance with the provisions of RSA 398-A, as amended, or to loans made by such persons.

IV. Any person not exempt under paragraph III, and the several members, officers, directors, agents and employees thereof, who shall willfully violate or participate in the violation of any provisions of paragraph I shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. If in the making or collection of a loan the licensee violates paragraph I of this section, the loan contract shall be void and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever.

#### 399-A:3 Application and Fees.

I. Every applicant for licensing under this chapter shall file with the commissioner a written application, under oath and penalty of perjury, and in the form prescribed by the commissioner. The application shall contain the name of the applicant; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees and principal officers; names of any branch managers, the trade name, if any, under

which the applicant proposes to conduct such business; the articles of incorporation or organization or partnership agreement; the name and address of the New Hampshire resident agent if the applicant is a foreign entity; and such other pertinent information as the commissioner may require. Each initial and renewal license application shall be accompanied by a nonrefundable application fee of \$450 for the principal place of business of the licensee within this state and the sum of \$450 for each branch of such licensee maintained in this state.

II. Every applicant for licensing shall be required to submit to the banking department detailed financial information sufficient for the commissioner to determine the applicant's ability to conduct the business of a small loan lender, payday lender, or title loan lender with financial integrity. The application shall include a balance sheet or a statement of net worth prepared in accordance with generally accepted accounting principles. Net worth statements provided in connection with a license application under this section shall be subject to review and verification during the course of any examination or investigation conducted under this chapter. Each applicant shall demonstrate that it has available for use in such business at each location specified in the application, at least \$25,000, or in the case of a licensee, has such amount available or actually invested in loans made under this chapter at each location.

III. Every applicant for licensing under this chapter shall file with the commissioner, in such form as the commissioner prescribes by rule, irrevocable consent appointing the commissioner to receive service of any lawful process in any non-criminal suit, action or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order under this chapter, and such person has not filed a consent to service of process under this section and personal jurisdiction over such person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to such person's appointment of the commissioner to receive service of any lawful process. Service may be made by leaving a copy of the process in the office of the commissioner along with \$5, but is not effective unless:

(a) The plaintiff, who may be the attorney general in a suit, action or proceeding instituted by him or her, forthwith sends a notice of the service and a copy of the process by registered mail to the defendant or respondent at such person's last address on file with the commissioner, and

(b) The plaintiff's affidavit of compliance with this paragraph is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

#### 399-A:4 Investigation of Application; License Requirements.

I. Upon the filing of the complete application for a small loan lender license, a payday loan lender license or a title loan lender license and payment of the required application fee, if the commissioner determines that the applicant's financial resources and responsibility, experience, character and general fitness, personnel, and record of past or proposed conduct warrant the public's confidence and that the business will be operated lawfully, honestly, and fairly within the purposes of this chapter, the commissioner shall enter an order approving such application

and shall issue a license to the applicant and shall issue licenses to the applicant's branches to engage in the business of a small loan lender, payday loan lender, or title loan lender under and in accordance with the provisions of this chapter.

II. If a person holds a valid license under this section and is in compliance with this chapter and the rules adopted pursuant to this chapter, such licensee may renew the license by paying the required annual fee of \$450 for the principal license and \$450 for each branch office to the banking department on or before December 1st for the ensuing year that begins on January 1st. Failure to renew the license shall result in the license terminating on December 31st.

III. Each license shall specify the name and address of the licensee, the location of the office or branch, and shall be conspicuously displayed there in a public area of the location. In case such location is changed, the commissioner shall endorse the change of location on the license without charge.

IV. No licensee shall transact any business provided for by this chapter under a trade name or any other name different from the name stated in its license or branch office license without immediately notifying the commissioner, who shall then amend the license accordingly. Before the corporate, organization, or trade name under which the licensed business is conducted is changed, the lender shall give notice to the commissioner who shall amend the license accordingly without cost. The name or trade name of the licensee shall not be confusing to the public or conflict with any existing licensed lender's name.

V. No license shall be issued to any person whose principal place of business is located outside of this state unless that person designates an agent residing within this state for service of process. Licensees shall be required to post their license at the agent's New Hampshire business location.

VI. Persons licensed under this chapter are under a continuing obligation to update information on file with the commissioner. If any information filed with the commissioner becomes materially inaccurate, the licensee shall promptly submit to the commissioner an amendment to its application records that will correct the information on file with the commissioner. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

VII. A licensee who ceases to engage in the business of a small loan lender, payday loan lender, or title loan lender at any time during a license year for any cause, including but not limited to bankruptcy, license revocation, or voluntary dissolution, shall surrender such license in person or by registered or certified mail to the commissioner within 15 calendar days of such cessation.

VIII. Any licensee may surrender any license by delivering it to the commissioner with written notice of a surrender, but such surrender shall not affect administrative, civil, or criminal liability for acts committed prior thereto.

399-A:5 Consumer Credit Administration License Fund. The bank commissioner shall keep a separate account, in the state treasurer's office, to be known as the consumer credit administration license fund. Moneys received from payment of fees under this chapter shall be credited to the consumer credit administration license fund. This fund may be expended by the commissioner with the approval of the governor and council for the purpose of supervising persons subject to supervision and licensing by the consumer credit administration division of the banking department.

**399-A:6 Reporting and Recordkeeping Requirements.**

I.(a) Each licensee shall file, under oath, an annual report with the commissioner on or before February 1st each year concerning its business and operations for the preceding calendar year or license period ending December 31st in the form prescribed by the commissioner. A separate annual report shall be filed for each type of license held by the licensee.

(b) Each licensee shall also file, under oath, its financial statement with the commissioner within 60 days from the date of its fiscal year end. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall include a balance sheet, income statement, statement of changes in owners' equity, a cash flow statement and note disclosures. If the financial statement is not audited, a certification statement shall be attached and signed by a duly authorized officer of the sales licensee. The certification statement shall state that the financial statement is true and accurate to the best of the officer's belief and knowledge.

II. The commissioner shall publish an analysis of the information required in the licensee's annual report as part of the commissioner's annual report.

III. Any licensee failing to file either the annual report or the financial statement required by this section within the time prescribed shall pay to the commissioner a penalty of \$25 for each calendar day the annual report or financial statement is overdue.

IV. In addition to the annual report and financial statement required by this section, the commissioner may require such regular or special reports as the commissioner deems necessary to the proper supervision of licensees under this chapter.

V. A licensee who files an annual report under this section which fails to disclose or materially misstates loan contracts made during the reporting year may, in addition to any other penalty provided by law and after notice and opportunity for hearing pursuant to RSA 541-A, be subject to a fine of not more than \$1,000 and to license revocation or suspension.

VI. Each licensee shall keep and use such books and accounting records as are in accord with sound and accepted accounting practices and enable the commissioner to determine whether the licensee is complying with this chapter.

**399-A:7 Denial, Suspension or Revocation of Licenses.**

I. The commissioner may by order deny, suspend or revoke any license or application if the commissioner finds that the order is in the public interest and the applicant or licensee, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant or licensee:

(a) Has filed an application for licensing which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) Has made a false or misleading statement to the commissioner or in any reports to the commissioner;

(c) Has made fraudulent misrepresentations, has circumvented or concealed, through whatever subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to a borrower under the provisions of this chapter;

- (d) Has failed to supervise its agents, managers or employees;
- (e) Is the subject of an order entered within the past 5 years by this state, any other state or federal regulator denying, suspending or revoking licenses or registration;
- (f) Is permanently, preliminarily, or temporarily enjoined by any court of competent jurisdiction from in engaging in or continuing any conduct or practice involving any aspect of lending or collection activities;
- (g) Is not qualified on the basis of such factors as experience, knowledge, and financial integrity;
- (h) Has engaged in dishonest or unethical practices in the conduct of the business of making or collecting small loans, payday loans, or title loans;
- (i) Has violated this chapter or any rule or order thereunder or has violated applicable federal laws or rules thereunder; or
- (j) For other good cause shown.

II. The commissioner may issue an order requiring the person to whom any license has been granted to show cause why the license should not be suspended or revoked. The order shall be calculated to give reasonable notice of the opportunity for hearing, and shall state the reasons for the issuance of the order.

III. If a licensee is a partnership, association, corporation, or entity however organized, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed association or corporation or any member of a licensed partnership has so acted or failed to act on behalf of said licensee as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for supervision of its branch offices and for the acts of any or all of his or her employees while acting as his or her agent if such licensee, after actual knowledge of such acts, retained the benefits, proceeds, profits or advantages accruing from such acts or otherwise ratified such acts.

IV. Any license revocation, suspension, or unfavorable action by the department on a license shall comply with the provisions of RSA 541-A. An aggrieved licensee may, pursuant to RSA 541-A and RSA 541, appeal an unfavorable action by the department. The department may take action for immediate suspension of a license, pursuant to RSA 541-A.

V. If the commissioner finds that any licensee or applicant for license is no longer in existence or has ceased to do business as a small loan lender, payday loan lender, or title loan lender, or cannot be located after reasonable search, the commissioner may by order revoke the license or deny the application. The commissioner may deem abandoned and withdraw any application for licensure made pursuant to this chapter, if any applicant fails to respond in writing within 180 days to a written request from the commissioner requesting a response. Such request shall be sent via certified mail to the last known address of the applicant that is on file with the commissioner.

VI. No revocation, suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any obligors, and such contracts and all lawful charges thereon may be collected by the licensee, its successors and assigns.

399-A:8 Cease and Desist Orders. The banking department may issue a cease and desist order against any licensee or person who it has reasonable cause to believe has violated or is about to violate the provisions of this chapter or any rule or order under this chapter. Delivery of such order shall be by hand or registered mail at the principal office of the licensee or other person. The order shall be calculated to give reason-

able notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. A hearing shall be held not later than 10 days after the request for such hearing is received by the commissioner after which and within 20 days of the date of the hearing the commissioner shall issue a further order vacating the cease and desist order or making it permanent as the facts require. All hearings shall comply with 541-A. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him or her upon consideration of the cease and desist order, the allegations of which may be deemed to be true. If the person to whom a cease and desist order is issued fails to request a hearing within 30 calendar days of receipt of such order, then such person shall likewise be deemed in default, and the order shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown.

#### 399-A:9 Consumer Inquiries.

I. Consumer complaints naming licensees under this chapter, which are filed in writing with the office of the bank commissioner, shall be forwarded via certified or registered mail to the licensee for response within 10 days of receipt by the department. Licensees shall, within 30 days after receipt of such complaint, send a written acknowledgement thereof to the consumer and the banking department. Not later than 60 days following receipt of such complaint, the licensee shall conduct an investigation of the complaint and either:

(a) Make appropriate corrections in the account of the consumer and transmit to the consumer and the banking department written notification of such corrections, including documentary evidence thereof; or

(b) Transmit a written explanation or clarification to the consumer and the banking department which sets forth, to the extent applicable, the reasons why the licensee believes its actions are correct, including copies of documentary evidence thereof.

II. A licensee who fails to respond to consumer complaints as required by this section within the time prescribed shall pay to the commissioner the sum of \$50 for each day such response is overdue. For purposes of this section, the date of transmission shall be the date such response is received by the commissioner.

III.(a) Licensees who because of extenuating circumstances beyond the control of the licensee, are unable to comply with the time frames prescribed in this section, may make written request to the commissioner for a waiver of such time frames. Waivers shall not be granted or considered unless the request for the waiver:

(1) Is received by the banking department within 50 days following the licensee's receipt of the complaint;

(2) Specifies the reason for the request; and

(3) Specifies a date certain by which the licensee shall comply with the provisions of this section.

(b) Requests for waivers shall be either granted or denied within 5 days of receipt by the banking department.

#### 399-A:10 Examinations and Investigations.

I. The commissioner or the commissioner's duly authorized representative may at any time, and shall periodically, with or without notice to the licensee or person, examine the business affairs of any licensee or any other person subject to this chapter, whether licensed or not, as the commissioner deems necessary to determine compliance with this chapter and the rules adopted pursuant to it. In determining compliance, the

commissioner or the duly authorized representative may examine the books, accounts, records, files, and other documents, whether electronically stored or otherwise, and any other matters of any licensee or person. The commissioner or the duly authorized representative shall have and be given free access to the office and places of business, files, safes, and vaults of all such persons, and shall have authority to require the attendance of any person and to examine him or her under oath relative to such loans or such business or to the subject matter of any examination or investigation and shall have authority to require the production of books, accounts, papers, and records of such persons.

II. Every person being examined, and all of the officers, directors, employees, agents, and representatives of such person shall make freely available to the commissioner or the commissioner's examiners the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination and shall facilitate the examination. The expense of such examination shall be chargeable to and paid by the licensee or person being examined. The procedure for such payment shall be the same as for payments by institutions for cost of examinations under RSA 383:11.

III. Those licensees or persons that maintain their files and business documents in another state shall appoint a New Hampshire agent and shall return such files and documents to their principal New Hampshire office or the office of their New Hampshire agent for examination no later than 21 calendar days after being requested to do so by the banking department. Failure to provide files and documents within the time established by this paragraph shall subject a licensee or person to a fine of \$50 per day for each day after 21 days the files and documents are not produced. Failure to provide files and documents within 60 days after being requested to do so by the banking department shall be sufficient cause for license revocation, suspension, or denial or other penalties under this chapter.

IV. The commissioner or the commissioner's duly authorized representative may investigate at any time any person that the commissioner reasonably believes is engaged in the business of making small loans, payday loans, or title loans, or participating in such business as principal, agent, broker, or otherwise; or any person who the commissioner has reasonable cause to believe is violating or is about to violate any provision of this chapter, or any rule or order under this chapter, whether such person shall claim to be within the authority or beyond the scope of this chapter. Any person not exempt hereunder who shall advertise for, solicit or hold himself or herself out as willing to make or procure small loans, payday loans, or title loans shall be presumed to be engaged in the business of making such loans.

V. In any investigation to determine whether any person has violated or is about to violate this chapter or any rule or order under this chapter, upon the commissioner's finding that the person violated this chapter or a rule or order under this chapter, or the person charged with the violation being found in default, the commissioner shall be entitled to recover the cost of the investigation, in addition to any other penalty provided for under this chapter.

VI. If the commissioner or examiner finds any accounts or records to be inadequate, or kept or posted in a manner not in accordance with generally accepted accounting principles, the commissioner may employ experts to reconstruct, rewrite, post or balance them at the expense of the person being examined if such person has failed to maintain, com-



plete or correct such records or accounting after the commissioner or examiner has given him or her written notice and a reasonable opportunity to do so.

VII. Any individual who refuses without just cause to be examined under oath or who willfully obstructs or interferes with the examiners in the exercise of their authority pursuant to this section shall be guilty of a misdemeanor.

VIII.(a) Upon receipt of a written report of examination, the licensee shall have 30 days or such additional reasonable period as the commissioner for good cause may allow, within which to review the report, recommend any changes and set forth in writing the remedial course of action the licensee will pursue to correct any reported deficiencies outlined in the report.

(b) If so requested by the person examined, within the period allowed in subparagraph (a), or if deemed advisable by the commissioner without such request, the commissioner shall hold a closed hearing relative to the report and shall not file the report in the department until after such closed hearing and issuance of his or her order thereon. If no such closed hearing has been requested or held, the examination report, with such modifications, if any, thereto as the commissioner deems proper, shall be accepted by the commissioner and filed upon expiration of the review period provided for in subparagraph (a). The report shall in any event be so accepted and filed within 6 months after final hearing thereon.

(c) All reports pursuant to this section shall be absolutely privileged and although filed in the department as provided in subparagraph (b) shall nevertheless not be for public inspection. The comments and recommendations of the examiner shall also be deemed confidential information and shall not be available for public inspection.

#### 399-A:11 Provisions Applicable to all Persons under this Chapter.

I. Any loan made outside this state, as permitted by the laws of the state in which the loan was made, may be collected in this state in accordance with its terms.

II. No person making small loans, payday loans, or title loans, shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever, any statement or representation with regard to the rates, terms, or conditions which is false, misleading or deceptive.

III. This chapter, or any part thereof may be modified, amended, or repealed so as to effect a cancellation or alteration of any license, or right of a licensee hereunder, provided that such modification, amendment or repeal shall not impair or affect the obligation of any pre-existing lawful contracts between any licensee and any borrowers.

IV. No interest shall be paid, deducted, or received in advance. Interest shall not be compounded and interest shall be computed only on unpaid principal balances. For the purpose of computing interest, whether at the maximum rate or less, a month shall be considered a calendar month and, where a fraction of a month is involved, a day shall be considered  $1/30$  of a month. However, if all or any part of the consideration for a loan contract is the unpaid principal balance of the prior loan with the same licensee then the loan contract may include unpaid interest of such prior loan which has accrued within 60 days of the making of the loan contract.

V. If charges in excess of those permitted by this chapter shall be charged, contracted for or received except as a result of an accidental

or bona fide error the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, charges or recompense whatsoever.

VI. No person shall take any confession of judgment or any power of attorney running to himself, herself, or any third person to confess judgment or to appear for the borrower in a judicial proceeding; nor take any note, agreement, or promise to pay which does not disclose the date and amount or maximum credit line of the note or agreement, a schedule or description of the payments to be made thereon, and the agreed charges or rates of charge; nor take any instrument in which blanks are left to be filled in after the loan is made.

VII. No person shall include any of the following provisions in a small loan, payday loan, or title loan contract:

(a) A hold-harmless clause;

(b) A confession of judgment or other waiver of the right to notice and the opportunity to be heard in an action;

(c) An agreement by the consumer not to assert any claim or defense arising out of the contract against the lender or any holder in due course;

(d) An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held by, owned by or due to the consumer, unless the waiver or limitation applies only to property subject to security interest executed in connection with the loan; or

(e) A clause permitting the continuation of interest after repossession of the consumer's motor vehicle.

VIII. No person shall be permitted to accept as collateral on a loan under this chapter:

(a) Real estate; or

(b) Household furniture presently in use on loans of \$2,000 or less.

IX. Any agreement purporting to convey to a licensee a security interest in the property listed in paragraph VII shall be null and void.

X. If a borrower desires to renew an existing closed-end loan, payday loan, or title loan for the purpose of obtaining additional cash a new contract shall be drawn up in its entirety and such prior loan shall be paid in full from such proceeds of the new loan. All legal papers in connection with such prior loan shall be stamped "PAID IN FULL" and returned to such borrower.

XI. No charge for any examination, service, brokerage, commission, or other fee shall be directly or indirectly made or contracted for on closed-end loans, payday loans, or title loans except the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer, for filing or recording in any public office any instrument securing such loan, which fees may be collected when such loan is made, or at any time thereafter and except the reasonable costs, charges, and expenses, including court costs actually incurred in connection with a repossession of the security or an actual sale of the security in foreclosure proceedings or upon entry of judgment.

XII. Credit life insurance, credit accident and health insurance, and credit involuntary unemployment insurance may be issued in connection with a loan or other credit transaction authorized by this chapter in compliance with the provisions of RSA 408:15, II and the cost of such insurance and any commission, benefit or return to the licensee therefrom shall not be deemed a violation of any provision of this chapter; provided, however, that if there is more than one borrower or obligor on any such loan or credit transaction, credit life insurance providing a single benefit may cover both borrowers or obligors.

XIII. The licensee may require a borrower to insure tangible personal property given to secure the loan against any substantial risk of loss, damage, or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is less, and for the customary insurance term approximating the term of the loan. The borrower shall not be required to insure against unusual or exceptional risks not ordinarily insured against in policies issued to nonborrowers. The premium for such insurance may be included in the principal amount of the loan. Such insurance shall be written by or through a duly licensed insurance agent or broker with a company qualified to do business in New Hampshire. Such insurance shall name the borrower as insured but may include the licensee as co-insured or protect the interest of the licensee under a loss-payable clause. No licensee shall require a borrower to duplicate or cancel existing insurance or to purchase insurance from a licensee or any employee, affiliate, or associate of the licensee or from any agent, broker, or insurance company designated by the licensee, as a condition precedent to the making of the loan.

XIV. A lender in the business of making small loans, payday loans, or title loans shall include in every loan contract a notice, printed in type size equal to at least 12-point type, stating that the consumer or the consumer's attorney may file a complaint with the commissioner.

**399-A:12 Provisions Applicable to Loans.**

I. For any closed-end loan of \$10,000 or less, excluding charges, a licensee may lend in money, goods or things of value upon such security not forbidden by RSA 399-A:12,VIII as may be agreed upon and may charge, contract for and receive charges on the entire principal of the loan, at rates agreed to in writing by the borrower and licensee.

II. For any open-end loan with a line of credit of \$10,000 or less, excluding charges, a licensee may charge, contract for and receive charges on the unpaid balances of the account at rates agreed to in writing by the borrower and the licensee.

III. No small loan lender shall permit any person to be obligated to him or her on one or more contracts of loan the total principal balance of which is more than \$10,000.

IV. For the purpose of applying paragraphs II and III of this section only, small loan lender licensee shall mean any single small loan lender, except that in the event any person or affiliated group of persons holds more than one small loan lender license, such person or affiliated group of persons shall be considered a single small loan lender licensee.

V. No small loan lender shall induce any potential borrower who is not a loan customer of the licensee to enter into a closed-end loan agreement, by delivering in the first instance a negotiable check for such loan to such potential borrower, without including the following information clearly printed on the endorsement side of the check:

(a) A statement which reads, "By endorsing this check, you become legally liable for repaying all moneys, including interest, as specified in the following loan agreement/disclosure statement;"

(b) The amount financed;

(c) The annual percentage rate;

(d) The number of installments; and

(e) The amount of each installment payment.

**VI. Every small loan lender shall:**

(a) Mail or deliver to the borrower, or if more than one, to one of them, at the time of making a loan under this chapter, a payment book in which space shall be provided for the record of all payments showing principal, interest and balance and which shall contain statements show-

ing the date of such loan; the amount of the principal of such loan; the total interest charged for the period of such loan; the nature of the security, if any, for such loan; the name and address of the borrower and of the licensee; and the description of schedule of payments on such loans. The payment book shall also have printed therein the following:

“Interpretation of Interest Charges in the Event Payments are Made when Due.

2% per month = 24% per year or \$13.47 per year on \$100

1 1/2% per month = 18% per year or \$10.01 per year on \$100”

Provided, however, a licensee may provide a borrower with a monthly billing statement in lieu of a payment book and the information required above, if the licensee has previously made a disclosure in accordance with the Federal Truth-in-Lending Act;

(b) Give to the person making any cash payment on account of any closed-end loan a receipt at the time such payment is made;

(c) Permit payment in advance in an amount equal to one or more full installments at any time during the regular business hours of the licensee;

(d) Upon repayment of a closed-end loan in full, mark plainly every note or other evidence of the indebtedness or assignment signed by an obligor or a copy of any of the foregoing documents with the words “PAID IN FULL” or “CANCELLED” and release or provide the borrower evidence to release any mortgage or security instrument no longer securing any indebtedness to the licensee. If the original is retained by the lender, the original shall be returned within a reasonable period of time upon the written request of the borrower;

(e) Upon repayment of an open-end loan in full, written notice from the borrower to the licensee of termination of such loan and surrender to the licensee of any checks or other device used to obtain credit; mark plainly every note, agreement or assignment signed by an obligor, with the words “PAID IN FULL” or “CANCELLED” and release or provide the borrower evidence to release any mortgage or security instrument no longer securing any indebtedness to the licensee.

VII. No lender shall conduct the business of making loans under this chapter at any office, suite, room, or place of business where liquor or lottery tickets are sold.

#### 399-A:13 Provisions Applicable to Payday Loan Lenders.

I. Each licensee shall conspicuously post in its licensed location a schedule of fees and interest charges, with examples using a \$300 loan payable in 14 days and 30 days.

II. Each payday loan shall be evidenced by a written loan agreement, which shall be signed by the borrower and a person authorized by the licensee to sign such agreements and dated the same day the loan is made and disbursed. The loan agreement shall set forth, at a minimum:

(a) The principal amount of the loan;

(b) The fee charged;

(c) The annual percentage rate, which shall be stated using that term, applicable to the transaction calculated in accordance with Federal Reserve Board Regulation Z;

(d) Evidence of receipt from the borrower of a check, dated the same date, as security for the loan, stating the amount of the check;

(e) An agreement by the licensee not to present the check for payment or deposit until a specified maturity date, which date shall be at least 7 days after the date the loan is made and after which date interest shall not accrue at a greater rate than 6 percent per year;

(f) An agreement by the licensee that the borrower shall have the right to cancel the loan transaction at any time before the close of business of the next business day following the date of the transaction by paying to the licensee, in the form of cash or other funds instrument, the amount advanced to the borrower; and

(g) An agreement that the borrower shall have the right to prepay the loan prior to maturity by paying the licensee the principal amount advanced and any accrued and unpaid fees.

III. The lender shall give a duplicate original of the loan agreement to the borrower at the time of the transaction.

IV. A lender shall not obtain any agreement from the borrower:

(a) Giving the lender or any third person power of attorney or authority to confess judgment for the borrower;

(b) Authorizing the lender or any third party to bring suit against the borrower in a court outside the state; or

(c) Waiving any right the borrower has under this chapter.

V. A lender shall not require, or accept, more than one check from the borrower as security for any loan at any one time.

VI. A licensee shall not cause any person to be obligated to the licensee in any capacity at any time in the principal amount of more than \$500.

VII. A lender shall not refinance, renew, or extend any loan.

VIII. A lender shall not cause a borrower to be obligated upon more than one loan at any time for the purpose of increasing charges payable by the borrower.

IX. A lender shall not require or accept a post-dated check as security for, or in payment of, a loan.

X. A lender shall not threaten, or cause to be instigated, criminal proceedings against a borrower if a check given as security for a loan is dishonored.

XI. A lender shall not take an interest in any property other than a check payable to the licensee as security for a loan.

XII. A lender shall not make a loan to a borrower to enable the borrower to pay for any other product or service sold at the licensee's business location.

XIII. Loan proceeds shall be disbursed in cash or by the lender's business check. No fee shall be charged by the lender or an affiliated check cashier for cashing a loan proceeds check.

XIV. A check given as security for a loan shall not be negotiated to a third party.

XV. Upon receipt of a check given as security for a loan, the lender shall stamp the check with an endorsement stating "This check is being negotiated as part of a payday loan pursuant to RSA 399-A, and any holder of this check takes it subject to all claims and defenses of the maker."

XVI. Before entering into a payday loan, the lender shall provide each borrower with a pamphlet, in form consistent with regulations promulgated by the commissioner, explaining in plain language the rights and responsibilities of the borrower and providing a toll-free number in the banking department for assistance with complaints.

XVII. Before disbursing funds pursuant to a payday loan, a lender shall provide a clear and conspicuous printed notice to the borrower indicating that a payday loan is not intended to meet long-term financial needs and that the borrower should use a payday loan only to meet short-term cash needs.

XVIII. A borrower shall be permitted to make partial payments, in increments of not less than \$50 on the loan at any time prior to maturity without charge. The licensee shall give the borrower signed, dated receipts for each payment made, which shall state the balance due on the loan.

399-A:14 Provisions Applicable to Title Loan Lenders. A title loan lender shall not:

I. Charge the consumer more than one fee for dishonored checks when the consumer issues more than one check to the lender. However, the title loan lender may recover from the consumer any fee charged to the lender by an unaffiliated financial institution for each dishonored check;

II. Make more than one outstanding loan that is secured by one title;

III. Make a title loan without providing the borrower within the title loan agreement the right to cancel the title loan at any time before the close of business of the next business day following the date of the transaction by repaying to the licensee in cash the amount advanced to the borrower.

IV. Offer, advertise, or make a loan with a rate of interest that is lower in the original period than in subsequent renewals.

399-A:15 Title Loan Renewals. A title loan shall be for an original term of no more than 60 days. A title loan lender may allow such loan to be renewed no more than 9 additional periods each equal the original term, provided however, that at each such renewal the borrower must pay at least 5 percent of the loan's original principal balance, in addition to any finance charge owed, to reduce the principal balance outstanding. If the borrower cannot pay this principal reduction at any renewal, the title loan lender may either: (i) declare the borrower in default, or (ii) allow the loan to be renewed, provided that the lender shall reduce the current principal amount of the loan by 5 percent of the original principal amount for the purposes of calculating interest thereafter. This reduction in principal shall continue to be owed by the borrower, but such amount shall not be entitled to accrue interest thereafter. For the purpose of this section, a renewal is any extension of a title loan for an additional period without any change in the terms of the title loan other than a reduction in principal. No accrued interest shall be capitalized or added to the principal of the loan at the time of any renewal.

399-A:16 Powers of the Commissioner.

I. The commissioner shall have the power to subpoena witnesses and administer oaths in any adjudicative proceeding and to compel, by subpoena duces tecum, the production of documents, papers, books, records, files and other evidence, whether electronically stored or otherwise, before the commissioner in any matter over which the commissioner has jurisdiction, control or supervision pertaining to the provisions of this chapter. The commissioner shall have the power to administer oaths and affirmation to any person whose testimony is required. If any person shall refuse to obey any such subpoena or to give testimony or to produce evidence as required thereby, any justice of the superior court may, upon application and proof of such refusal, order the issuance of a subpoena, or subpoena duces tecum, out of the superior court, for the witness to appear before the superior court to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the superior court, the clerk shall issue such subpoena, as directed, requiring the person to whom it is directed to appear at the time and place therein designated. If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the commissioner may apply to any justice of the superior court who, after proof of such refusal, shall

issue such citation, directed to any sheriff, for the arrest of such person, and, upon such person's being brought before such justice, proceed to a hearing of the case. The court shall have power to enforce obedience to such subpoena, and the answering of any question and the production of any evidence that may be proper, by a fine not exceeding \$10,000 or by imprisonment, or by both.

II. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the administration and enforcement of this chapter.

III. The commissioner may prepare, alter, or withdraw such forms as are necessary to comply with the provisions of this title.

IV. The commissioner may issue, amend, or rescind such orders as are reasonably necessary to carry out the provisions of this chapter.

V. The commissioner may, for good cause shown, abate all or a portion of delinquency penalties assessed under this chapter.

VI. All actions taken by the commissioner pursuant to this chapter shall be taken only when the commissioner finds such action necessary or appropriate to the public interest or for the protection of consumers and consistent with the purposes fairly intended by the policy and provisions of this title.

#### 399-A:17 Records and Filings.

I. A document is filed when it is received by the commissioner. If any filing deadline date falls on a weekend or on a New Hampshire state or federal legal holiday, the due date shall be automatically extended to the next business day following such weekend or holiday.

II. Electronic filings, when received by the commissioner, are deemed filed, and are prima facie evidence that a filing has been duly authorized and made by the signatory on the application or document, are admissible in any civil or administrative proceeding under this chapter, and are admissible in evidence in accordance with the rules of superior court in any action brought by the attorney general under this chapter.

III. A licensee may maintain its records in electronic format if, upon request, the licensee provides the commissioner with:

(a) A full explanation of the programming of any data storage or communications systems in use; and

(b) Information from any books, records, electronic data processing systems, computers, or any other information storage system in the form requested by the commissioner.

#### 399-A:18 Penalties.

I. Any person and the several members, officers, directors, agents, and employees thereof who shall knowingly violate any provision of this chapter, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

II. Any person violating the provisions of RSA 399-A:12 through RSA 399-A:15 or engaging in the business of a small loan lender, payday loan lender, or title loan lender without first obtaining a license if a license is required under this chapter shall be barred from recovering any finance charge, delinquency, or collection charge on the contract.

III. Any person who knowingly violates any rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to such suspension or revocation of any registration or license, or administrative fine not to exceed \$2,500 for each violation in lieu of or in addition to such suspension or revocation as may be applicable under this title for violation of the provision to which such rule or order relates. Each of the acts specified shall constitute a separate violation.

IV. Any person who negligently violates any rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to such suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or administrative fine not to exceed \$1,500 for each violation in lieu of or in addition to such suspension or revocation as may be applicable under this title for violation of the provision to which such rule or order relates. Each of the acts specified shall constitute a separate violation.

V. Any person who, either knowingly or negligently, violates any provision of this chapter may, upon notice and opportunity for hearing, and in addition to any such other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, including forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and each such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed.

VI. Every person who directly or indirectly controls a person liable under this section, every partner, principal executive officer or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act constituting the violation, and every licensee or person acting as a common law agent who materially aids in the acts constituting the violation, either knowingly or negligently, may, upon notice and opportunity for hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed. No person shall be liable under this paragraph who shall sustain the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist.

399-A:19 Review. In addition to any other available remedy, any person considering himself or herself aggrieved by any act or omission of the commissioner may, within 30 days from the date of such act, or failure to act, bring an action in the superior court to review such act, or failure to act. The hearing before the court shall be based on the record before the commissioner and his or her findings and on such new evidence as may be introduced.

2 Effective Date. This act shall take effect upon its passage.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. Once again, Senator Flanders has learned a great deal as the result of this bill. A month and a half ago I did not know what a payday loan was and I am not sure that I knew what a title loan was. Approximately four weeks ago some young ladies from the South came up and gave me a lesson on what a payday loan is and I learned a great deal. What has happened, is when I was a youngster, John Childs was the president of the bank in Hillsborough, New Hampshire. He owned it. We used to go to him as young people and he would loan us money, \$200-\$300. As a result of bank mergers and banks getting larger, they do not loan small amounts anymore. So this induced some people to come in to set up an industry to make small loans. They have come to New Hampshire and there were no regulations. Now we have several offices



in New Hampshire that are doing this type of business. So with the Banking Commissioner being the prime sponsor of this bill, we are setting up rules and regulations for these people to do business in this state. Senator D'Allesandro spent a great deal of time on the amendment. He deserves the credit for all of the work on this. We ask you to pass this bill as amended. Also you may recall that I presented a bill, I think, last week, to add people to the banking commission. They will be auditing people like this to make sure that these rules and regulations are enforced. I ask for your support. Thank you very much.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 99**, relative to high cost mortgage loans. Banks Committee. Ought to pass with amendment, Vote 4-0. Senator Peterson for the committee.

**Banks**

**March 26, 2003**

**2003-0995s**

**06/09**

### **Amendment to SB 99**

Amend RSA 397-C:1, III as inserted by section 1 of the bill by replacing it with the following:

III. "Lender" means any individual or entity that in any 12-month period originates 4 or more covered loans. The individual or entity to whom the covered loan is initially payable, either on the face of the note or contract, shall be the lender.

Amend RSA 397-C:8 as inserted by section 1 of the bill by inserting after paragraph II the following new paragraph:

III. Nothing in this chapter shall limit or prevent the right of the New Hampshire housing finance authority to adopt rules and regulations authorized under RSA 204-C.

SENATOR PETERSON: Thank you Mr. President. I move SB 99 ought to pass with amendment. This legislation is another attempt at improving the mortgage lending industry while providing protection for customers at the same time. Predatory lending for high cost mortgage loans has made national news in the past few years. While New Hampshire has not been subject to such practices, this is a pro-active effort, forehanded effort if you will, to prevent predatory lending in our state. One of the highlights of this bill is that it clearly delineates that the jurisdiction over lending practices in this state fall under designated state and federal regulatory agencies. The Banks Committee asks your support for the motion of ought to pass with amendment. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 177**, relative to credit unions. Banks Committee. Ought to pass with amendment, Vote 4-0. Senator Barnes for the committee.

**Banks**

**March 26, 2003**

**2003-0996s**

**06/01**

**Amendment to SB 177**

Amend the bill by replacing all after the enacting clause with the following:

1 Voting; Prohibition Against Voting by Proxy Removed. Amend RSA 394-B:11 to read as follows:

394-B:11 Voting. No member shall be entitled to ~~[vote by proxy or to]~~ have more than one vote.

2 Purchase of Real Estate; Lease Added. Amend the section heading of RSA 394-B:27 to read as follows:

394-B:27 Purchase **or Lease** of Real Estate.

3 Lease; Approval of Bank Commissioner Required. Amend RSA 394-B:27, II to read as follows:

II. Any purchase, **lease**, mortgage, exchange or sale of real estate acquired or to be acquired for the purposes of this section shall be subject to the approval of the bank commissioner.

4 Declaring; Use of Earnings of Previous Years. Amend RSA 394-B:39 to read as follows:

394-B:39 Declaring. At such intervals and for such periods as the board of directors may authorize, and after ~~[provision for]~~ **any required transfers to** the required reserves, the board of directors may declare dividends on shares and interest on deposits from ~~[the undivided]~~ **current** earnings. Dividends may be paid at various rates with due regard to the conditions that pertain to each type of share or deposit account such as minimum balance, notice and time requirements. ~~[Such dividends may be paid in whole or in part from undivided earnings of preceding years, not to exceed 20 percent of such earnings in any one year without the commissioner's approval and provided that such earnings are a part of the surplus of the credit union in excess of all requirements of the guaranty fund.]~~ **Dividends may be paid from the undivided earnings of previous years if the payment of the dividends does not cause the net worth of the credit union to fall below "Well Capitalized," as set forth in Title 12 of the code of Federal Regulations, Part 702 Prompt Corrective Action (PCA). Payment of these dividends from prior years' undivided earnings shall be reported to the bank commissioner within 30 days of dividend declaration. With prior approval of the bank commissioner, dividends may be paid from the undivided earnings of previous years if the payment of the dividends does cause the credit union's net worth to fall below "Well Capitalized" as set forth in Title 12 of the Code of Federal Regulations, Part 702 Prompt Corrective Action (PCA).**

5 Preliminary Audit; 100 Percent Verification Removed. Amend RSA 394-B:41 to read as follows:

394-B:41 Preliminary Audit. The supervisory committee shall at least semi-annually conduct or cause to be conducted an audit of the books and records and an examination of the business and affairs of the credit union, or, with the approval of the bank commissioner, the credit union may engage an independent professional auditor to conduct such an audit and examination at least annually. The supervisory committee or such independent professional auditor shall conduct a thorough audit of

receipts, disbursements, assets and liabilities. The supervisory committee or such independent professional auditor shall conduct ~~[100 percent]~~ verification not less than every 2 years.

6 Loans to Officials; Approval and Ratification. Amend RSA 394-B:46 to read as follows:

394-B:46 Loans to Officials. Members of the board of directors, credit committee, or supervisory committee may borrow from the credit union. Members of the board of directors, credit committee, and supervisory committee may borrow or become surety for loans in excess of their holdings in such credit union provided such loans are approved by a majority of the members of the ~~[credit]~~ **board of directors and ratified by a majority of the members of the** supervisory ~~[committees]~~ **committee**; provided, that no member of a credit committee or supervisory committee shall have a vote concerning his **or her** own loan application, or be entitled to participate in the deliberations regarding said loan. No loan to any such official shall receive terms more favorable than those extended to other persons borrowing from said credit union.

7 Guaranty Fund Replaced with Regular Reserves. RSA 394-B:49 is repealed and reenacted to read as follows:

394-B:49 Regular Reserves. At the end of each quarterly reporting period, a transfer from current earnings shall be made to the regular reserve as set forth in Title 12 of the Code of Federal Regulations, Part 702 Prompt Corrective Action (PCA). In the event that current earnings are incapable of providing the required transfer, undivided earnings shall be utilized to augment the amount transferred from current earnings. The credit union shall notify the commissioner within 30 days of any required transfers made from undivided earnings to the regular reserve. Prior approval of the commissioner is required before any disbursements from the regular reserve.

8 Repeal. The following are repealed:

I. RSA 394-B:14, relative to the inclusion of shares in the capital of a credit union.

II. RSA 394-B:48, relative to the purpose for the loan, security offered, and the requirement that the application be in writing, is repealed.

9 Effective Date. This act shall take effect 60 days after its passage.

**2003-0996s**

#### AMENDED ANALYSIS

This bill makes various changes to the law regulating credit unions, including:

I. Makes a change in member voting.

II. Requires the bank commissioner's approval for any lease of property by a credit union.

III. Makes a change in dividend payments.

IV. Establishes certain conditions when credit union directors, credit committee and supervisory committee members may borrow from the credit union in excess of their holdings in it.

V. Adds a provision for regular reserves and deletes the provision for a guaranty fund.

SENATOR BARNES: Thank you Mr. President. I move SB 177 ought to pass with amendment. This legislation arose out of a desire to make regulations simpler for credit unions and make several changes to laws for credit unions. Credit unions entering into any lease of property must now seek the banking commissioner's approval. Credit unions are supporting this legislation because it provides an extra layer of protection

and sophistication for credit unions that they may need. It also aligns practice with statute regarding loans to officials of a credit union. This legislation has the support of the credit unions. The Banks Committee asks for your support of ought to pass.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 207**, relative to transactions exempt from the consumer protection act. Banks Committee. Rerefer to committee, Vote 3-0. Senator Barnes for the committee.

**SENATOR BARNES:** Thank you Mr. President. I move SB 207 be rereferred. This bill changes exemptions from the Consumer Protection Act that are currently industry based to being transaction based. The sponsor of this bill would like more time to work with this legislation. The Banks Committee asks your support for the motion of rereferred. Thank you.

**Committee report of rerefer is adopted.**

**Senator Foster Rule #42 on SB 207.**

**SB 160-FN-A**, making a capital appropriation to continue construction of the vocational center in Nashua. Capital Budget Committee. Rerefer to committee, Vote 3-0. Senator Clegg for the committee.

#### **MOTION TO TABLE**

Senator Clegg moved to have **SB 160-FN-A** laid on the table.

**Adopted.**

#### **LAI D ON THE TABLE**

**SB 160-FN-A**, making a capital appropriation to continue construction of the vocational center in Nashua.

**SB 229**, making reference changes to the school building aid statutes. Education Committee. Ought to pass, Vote 2-0. Senator Johnson for the committee.

**SENATOR JOHNSON:** Thank you Mr. President. I move SB 229 ought to pass. An audit performed by the Legislative Budget Assistant found that the New Hampshire Department of Education not the state Board of Education, as listed in statute, is responsible for dealing with school building aid. The audit recommended that either statute or practice be changed. This legislation seeks to change statute to give the Department of Education authority over school building aid to be in sync with current practice. The Education Committee asks your support for the motion of ought to pass. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**Recess.**

**Out of recess.**

**CACR 14**, relating to the funding of public education. Providing that the state shall fund an amount not less than 30 percent of the total average statewide expenditure for public education for kindergarten through

grade 12 during the previous biennium and that the general court shall have the power to apportion this amount by statute; that the state shall assure the opportunity for an adequate public education for all pupils in the state in grades kindergarten through 12; and that no tax in any form on the value of real property shall be used to fund the state's obligation to cherish and support public education. Education Committee. Rerefer to committee, Vote 4-0. Senator O'Hearn for the committee.

**Recess.**

**Out of recess.**

**TAPE INAUDIBLE**

### **MOTION TO TABLE**

Senator O'Hearn moved to have **CACR 14** laid on the table.

**Adopted.**

### **LAI D ON THE TABLE**

**CACR 14**, relating to the funding of public education. Providing that the state shall fund an amount not less than 30 percent of the total average statewide expenditure for public education for kindergarten through grade 12 during the previous biennium and that the general court shall have the power to apportion this amount by statute; that the state shall assure the opportunity for an adequate public education for all pupils in the state in grades kindergarten through 12; and that no tax in any form on the value of real property shall be used to fund the state's obligation to cherish and support public education.

**HB 91**, relative to the telecommunications planning and development initiative and advisory committee. Energy and Economic Development Committee. Ought to pass, Vote 3-0. Senator Below for the committee.

**SENATOR BELOW:** Thank you Mr. President. I move that HB 91 ought to pass as recommended by the Senate Committee on Energy and Economic Development. This bill would extend the existence of the Telecommunications Planning and Development Initiative and Advisory Committee. This committee was created just a few years ago, and I believe we have seen some good things come out of it already. The committee just recently released an extensive study report that details the short-term future of high speed Internet access throughout the state, and I believe that an extension of this committee would allow it to continue its important work in support of economic development. Please support the 3-0 report of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 233**, relative to the nuclear planning and response program. Energy and Economic Development Committee. Ought to pass, Vote 3-0. Senator Gallus for the committee.

**SENATOR GALLUS:** Thank you Mr. President. I move that HB 233 ought to pass as was recommended by the Senate Committee on Energy and Economic Development. This bill is to take care of some housecleaning in the Seabrook station. Historically, the Public Utilities Commission has been responsible for overseeing Seabrook, and maintaining any fees that are assessed by the state. However, now that Seabrook has been sold to a private entity, the PUC no longer has any supervisory authority, therefore, this bill transfers the responsibility for assessing fees over to the

Department of Safety. We feel this is needed because the Department of Safety works very closely with Seabrook in monitoring their safety response programs. The committee voted 3-0 that this bill ought to pass. I thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 502**, establishing a committee to study options for reducing the impact of exhaust emissions from diesel engines in New Hampshire. Environment Committee. Ought to pass with amendment, Vote 4-0. Senator Below for the committee.

**Environment**

**March 28, 2003**

**2003-1027s**

**08/10**

**Amendment to HB 502**

Amend the bill by replacing section 2 with the following:

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Five members of the house of representatives, appointed by the speaker of the house.

(b) Two members of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

SENATOR BELOW: Thank you Mr. President. I move that HB 502 ought to pass with amendment as was recommended by the Senate Environment Committee. This bill will establish a committee to study the affects of exhaust emissions from diesel engines in New Hampshire. All of us have heard many complaints in the past about the negative affects of diesel engines emitting their exhaust into our air. But we are also aware that many of our key industries rely on the use of diesel engines. This committee is intended to look at diesel engines to determine any possible solutions that might result in lower or safer emissions. This committee will then report back after it collects its findings. Taking into account the number of current study committees each of us may sit on, the committee amended the bill to reduce the number of Senators on this particular committee. Please support the 4-0 committee report. Thank you Mr. President.

SENATOR JOHNSON: Thank you Mr. President. I just wanted to speak as chair of the Environment Committee, that I was pleased to have the industry come in and give us an overview of what they are doing to help the cause. That was good to hear that.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 199**, revising the nurse practice act. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 3-0. Senator Estabrook for the committee.

**Senate Executive Departments and Administration**  
**March 27, 2003**  
**2003-1014s**  
**08/10**

**Amendment to SB 199**

Amend RSA 326-B:2 as inserted by section 1 of the bill by replacing it with the following:

326-B:2 Definitions.

I. "Advanced registered nurse practitioner (ARNP)" means a registered nurse currently licensed in New Hampshire who is additionally licensed by the board in one or more practice specialties.

II. "Board" means the New Hampshire board of nursing established in RSA 326-B:3.

III. "Certified graduate nurse (CGN)" means those graduate nurses exempted by chapter 265, laws of 1959 and certified prior to January 1, 1975.

IV. "Delegation" means the transfer of authority for the performance of a specific task from a licensed nurse authorized to perform the task to someone who does not have that authority when such transfer is authorized by this chapter or the rules adopted by the board.

V. "Licensed nursing assistant" means an individual who holds a current license to provide client care under the direction of a registered nurse or licensed practical nurse.

VI. "Licensed practical nurse (LPN)" means an individual who holds a current license to practice practical nursing as defined in paragraph IX.

VII. "Medication nursing assistant" means a licensed nursing assistant holding a currently valid certificate authorizing the delegation to the nursing assistant of tasks of medication administration.

VIII. "Nursing" means assisting clients or groups of clients to attain or maintain optimal health by implementing a strategy of care to accomplish defined goals and by evaluating responses to nursing care and medical treatment. Nursing includes basic health care that helps both clients and groups of clients cope with difficulties in daily living associated with their actual or potential health or illness status and also those nursing activities that require a substantial amount of scientific knowledge or technical skill. Nursing also includes, but is not limited to:

(a) Promoting an environment conducive to well being.

(b) Planning and implementing independent nursing strategies and prescribed treatment in the prevention and management of illness, injury, disability and achievement of a dignified death.

(c) Providing health counseling and teaching.

(d) Collaborating on aspects of the health regimen.

(e) Advocating for the client.

IX. "Nursing-related activities" means client care provided by a licensed nursing assistant directed by an ARNP, an RN, or an LPN.

X. "Practical nursing" means the practice of nursing as defined in paragraph VIII by a nurse whom:

(a) Uses sound nursing judgment based on preparation, knowledge, skills, understanding, and past nursing experience.

(b) Works under the direction of a registered nurse, advanced registered nurse practitioner, dentist or physician.

(c) Functions as a member of a health care team and contributing to the assessment, planning, implementation and evaluation of client care.

XI. "Registered nurse (RN)" means an individual who holds a current license to practice registered nursing as defined in paragraph XI.

XII. "Registered nursing" means the application of nursing knowledge, judgment and skill drawn from broad in-depth education in the biological, psychological, social, and physical sciences in assessing and diagnosing the health status of a client, and in planning, implementing and evaluating client care which promotes the optimum health, wellness and independence of the individual, the family and the community.

Amend RSA 326-B:11 as inserted by section 1 of the bill by replacing it with the following:

326-B:11 Qualifications for Licensure to Practice as a Registered Nurse or a Licensed Practical Nurse.

I. An applicant for licensure to practice as a registered nurse or a licensed practical nurse who has never been licensed or who holds a currently valid license issued by a foreign jurisdiction other than a Canadian jurisdiction shall:

(a) Submit a completed application and pay the license fee.

(b) Be a graduate of a board-approved nursing education program or a program that is determined by the board to be comparable to a board-approved nursing education program.

(c) Pass a national examination approved by the board.

(d) Be of a good character as character relates to the practice of nursing; and

(e) Have complied with continuing competence requirements, if applicable.

II. An applicant for licensure to practice as a registered nurse or a licensed practical nurse who holds or has held a license issued by another state shall meet the requirements of paragraph I, except that an applicant who has passed a national examination approved by the board shall not be required to take the examination again.

III. An applicant for licensure to practice as a registered nurse or a licensed practical nurse who received nursing education in Canada and was never licensed by any state shall:

(a) Meet the requirements of paragraph I above; or

(b) Meet the requirements of paragraph I (a), (d) and (e) above, have graduated from a Canadian nursing education program, and demonstrate that:

(1) Between the years 1939 and 1970 he or she passed the English version of the National League for Nursing Board Test Pool Examination;

(2) Between the years 1970 and 1980 he or she wrote the English version of the Canadian Nurses' Association testing service 5-part examination and received a minimum passing score of 350 in each of the following topics: medical nursing, surgical nursing, pediatric nursing, maternity nursing, and psychiatric nursing; or

(3) Since the year 1980 he or she wrote the English version of the Canadian Nurses' Association testing service comprehensive examination and received a minimum passing score of 400.

Amend RSA 326-B:13 as inserted by section 1 of the bill by replacing it with the following:

326-B:13 Certificate of Medication Administration for Licensed Nursing Assistants. The board may issue a certificate of medication administration to a currently licensed nursing assistant who qualifies under rules adopted by the board pursuant to RSA 541-A, and may renew such certificate on a biennial basis in accordance with 326-B:18.



Amend RSA 326-B:14 as inserted by section 1 of the bill by replacing it with the following:

326-B:14 Advanced Registered Nurse Practitioner.

I. The board may issue one or more specialty licenses to applicants meeting the qualifications stated in paragraph III. Holding one or more currently valid specialty licenses qualifies the holder as an advanced registered nurse practitioner.

II. An applicant for licensure in a specialty shall:

(a) Hold a currently valid license as a registered nurse;

(b) Submit a completed application for specialty licensure and pay the specialty license fee;

(c) Have graduated after July 1, 2003 with a master's degree earned in an advanced registered nurse practitioner education program accredited by a national accrediting body or have graduated before July 1, 2003 from an advanced registered nurse practitioner education program accredited by a national accrediting body; and

(d) Be currently certified by a board-approved national certifying body in the specialty for which the applicant was educated.

III. An applicant for renewal of a specialty license issued after September 30, 1984 shall:

(a) Submit a completed application for renewal and pay the renewal fee;

(b) Hold, and have since first specialty licensure maintained, a currently valid license as a registered nurse;

(c) Be, and have since first specialty licensure continued to be, certified by a board-approved national certifying body;

(d) Meet any continued competence requirements set by the board; and

(e) Complete a minimum of 4 contact hours training in pharmacology appropriate to the academic degree achieved by the applicant and to the specialty for which licensure renewal is sought.

IV. An applicant for renewal of a specialty license issued before September 30, 1984 shall meet the requirements of paragraph III except that the applicant shall not be required to be and continue to have been certified by a board-approved national certifying body.

V.(a) An advanced registered nurse practitioner shall have authority to possess, compound, prescribe, administer, and dispense and distribute to clients controlled and non-controlled drugs in accordance with the formulary established by the joint health council.

(b) Such plenary authority may be denied, suspended, or revoked by the board after notice and the opportunity for hearing, upon proof that the authority has been abused.

Amend the introductory paragraph of RSA 326-B:26 as inserted by section 1 of the bill by replacing it with the following:

The provisions of this chapter shall not prohibit or limit:

Amend RSA 326-B:26 as inserted by section 1 of the bill by inserting after paragraph VI the following new paragraph:

VII. Direct care, including the administration of medications, by any person employed, or under contract, to provide direct care to clients receiving community-based services pursuant to RSA 135-C or RSA 171-A, provided that persons delivering such care who administer medications shall have successfully completed a medication administration educational program conducted by a registered nurse and approved by the board under rules adopted pursuant to RSA 541-A. The commissioner of health and human services, in consultation with the board, shall adopt rules es-

establishing criteria for the delivery of direct care, including the administration of medications, and for the process of approving a registered nurse to conduct the medication administration educational program.

Amend RSA 326-B:30, II as inserted by section 1 of the bill by replacing it with the following:

II. With respect to the education programs named in paragraph I, the board is authorized to establish:

- (a) Minimum qualification of faculty and administrators;
- (b) The content of the curriculum;
- (c) The minimum number of hours of instruction and clinical work;
- (d) Any standards to be met for successful completion of the programs which may be additional to any required by the entities conducting the programs;
- (e) Procedures for initial, full, and conditional approval of the programs by the board;
- (f) Qualifications for entrance into education programs intended to prepare licensed nursing assistants to become medication nursing assistants, which qualifications may be additional to any required by the entities conducting the programs;
- (g) Application procedures for entrance into education programs intended to prepare licensed nursing assistants to become medication nursing assistants, which procedures may be additional to any required by the entities conducting the programs;
- (h) Administrative organization of education programs intended to prepare licensed nursing assistants to become medication nursing assistants; and
- (i) The content of, and standards for passing, examinations administered by education programs intended to prepare licensed nursing assistants to become medication nursing assistants.

Amend the section heading of RSA 326-B:31 as inserted by section 1 of the bill by replacing it with the following:

326-B:31 Disciplinary Action; Misconduct.

Amend RSA 326-B as inserted by section 1 of the bill by inserting after section 37 the following new RSA section:

326-B:38 Direct Care in Community-Based Services. The delivery of direct care, including the administration of medications, by non-licensees to individuals receiving community-based services pursuant to RSA 135-C or RSA 171-A shall not be construed as practicing nursing or nursing-related activities.

SENATOR ESTABROOK: Thank you Mr. President. I move ought to pass with amendment on SB 199. Senate Bill 199 is a joint recommendation of the Board of Nursing and the Joint Legislative Committee on Administrative Rules, which is required by law to make legislative recommendations. Senate Bill 199 amends current law to provide specific and clear authority to the Board of Nursing for the creation of categories of advanced registered nurse practitioner licensure, and the establishment of fees for such categories. Currently, fees not specifically authorized by statute are prohibited. The bill also provides specific authority to the Board of Nursing to adopt rules relative to regulating the medication administration programs and program personnel. The bill was amended to add in a category of nurse practitioners that was left out inadvertently, relative to licensing, to correct grammatical errors and to make

technical changes suggested by the nursing community in order to clarify the definition of nursing related activities. The committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 64**, establishing a commission to study the creation of an integrated criminal justice information system and any issues related to the privacy, security, and dissemination of such criminal justice information. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 3-0. Senator Cohen for the committee.

**Senate Executive Departments and Administration**

**March 27, 2003**

**2003-1015s**

**04/01**

**Amendment to HB 64**

Amend paragraph I of section 2 of the bill by inserting after subparagraph (n) the following new subparagraph:

(o) The United States attorney for New Hampshire, or designee.

Amend paragraph II(f) of section 2 of the bill by replacing it with the following:

(f) Study the effect of any such integrated criminal justice system on the privacy rights and other rights of individuals guaranteed under the New Hampshire constitution and the Bill of Rights of the United States Constitution.

(g) Solicit information from any source deemed relevant to its work.

SENATOR COHEN: Thank you Mr. President. I move ought to pass with amendment on HB 64, which is designed to support a coalition of local, county and state law enforcement in the development of an information technology network focused on identifying, warehousing and disseminating up-to-date and timely data. The Justice One or J-1 network development is an ongoing process. The project leaders from the Administrative Office of the Courts, the Department of Safety, the Department of Corrections, and the local law enforcement, are working with federal officials to underwrite the project. Once operational, J-1 will be able to make information such as parolee information, which usually takes up to six months to input into the system to be updated almost instantaneously. The commission created by HB 64 will study issues J-1 will have to address, including privacy protection, information access and how to disseminate complex information. The committee amended the bill by adding the U.S. Attorney's office to the commission and privacy issues to the commission's duties. The committee therefore, unanimously recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 69**, relative to the reinstatement of expired licenses for architects. Executive Departments and Administration Committee. Ought to pass, Vote 3-0. Senator Cohen for the committee.

SENATOR COHEN: Thank you Mr. President. I move ought to pass on HB 69. This bill brings architects fees and procedures relative to expired licensees into line with other trades represented on the Joint Board of Professional Engineers, Architects, Land Surveyors, Professional Geologists and Natural Scientists. All the trades represented on the board apply late fees and continuing education requirements when someone who has not been keeping their license current reapplies for a license. The late fee described in the bill is necessary to pay for the additional time required to update the architects license. The committee unanimously recommends ought to pass on HB 69. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 79**, relative to the regulation of the installation and servicing of fire suppression systems. Executive Departments and Administration Committee. Rerefer to committee, Vote 3-0. Senator Cohen for the committee.

SENATOR COHEN: Thank you Mr. President. I move rerefer on HB 79, which requires the state fire marshal to adopt rules for the certification of persons engaged in the servicing and installation of fire suppression systems in the state. The bill would also establish an advisory committee, relative to the regulation of the installation and servicing of fire suppression systems. Everyone who testified during the public hearing expressed the need for further work on the bill. The Department would like to sit down with the industry and the industry wants to add additional life safety systems to the legislation. Electricians say that they should be part of the advisory board and the sponsor would like to satisfy these concerns. With the support of the sponsor, the department and the industry, the committee unanimously recommends rerefer on HB 79. Thank you Mr. President.

### **MOTION TO TABLE**

Senator Kenney moved to have **HB 79** laid on the table.

**Adopted.**

### **LAIID ON THE TABLE**

**HB 79**, relative to the regulation of the installation and servicing of fire suppression systems.

**SB 15**, relative to election day registration. Finance Committee. Ought to pass with amendment, Vote 5-0. Senator Boyce for the committee.

**Senate Finance**  
**March 25, 2003**  
**2003-0984s**  
**03/10**

### **Amendment to SB 15**

Amend the bill by replacing section 1 with the following:

1 Voters and Checklists; Registering at Polling Place, Same Day Registration; Affidavit. RSA 654:7-a, II is repealed and reenacted to read as follows:

II. Any person whose name is not on the checklist but who is otherwise a qualified voter shall be entitled to vote by requesting to be registered to vote at the polling place on election day. The voter may then vote at that election. The applicant may be required to produce appropriate proof of qualifications as provided in RSA 654:12. The applicant

shall complete an election day affidavit which shall be supplied by the secretary of state, and which shall contain the following written oath or affirmation:

"My name is \_\_\_\_\_. I am today registering to vote in the city/town of \_\_\_\_\_, New Hampshire.

I understand that to vote in this city/town, I must be 18 years of age, I must be a United States citizen, and I must be domiciled in this city/town.

I understand that a person can claim only one state and one city/town as his or her domicile at a time. A domicile is that place, to which upon temporary absence, a person has the intention of returning. By voting today, I am acknowledging that I am not domiciled in any other state or any other city/town. I understand that if I were domiciled in another state or city/town, I would be entitled to vote in elections held within that state or city/town by absentee ballot.

In declaring New Hampshire as my domicile, I am subject to the laws of the State of New Hampshire which apply to all residents, including laws requiring me to register my motor vehicles and apply for a New Hampshire driver's license within 60 days of becoming a resident.

In declaring New Hampshire as my domicile, I realize that I may be forfeiting benefits or rights, including the right to vote in another state.

If I have any questions as to whether I am entitled to vote in this city/town, I am aware that a supervisor of the checklist is available to address my questions or concerns.

I acknowledge that I have read and understand the above qualifications for voting and do hereby swear, under the penalties for voting fraud set forth below, that I am qualified to vote in the above-stated city/town on this day, and I have not voted and will not vote at any other polling place this election."

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Date

---

Signature

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000.

SENATOR BOYCE: Thank you Mr. President. I move that SB 15 be ought to pass with amendment. Senate Bill 15 revises the affidavit requirements for persons registering to vote on Election Day to require the applicant to acknowledge the implications of declaring residency in New Hampshire. The financial implications of SB 15 are minimal. The Secretary of State already prepares affidavits and historically there have been no prosecutions under RSA 659. Based on these assumptions, the fiscal impact on the judiciary would be minimal. The committee amendment merely changes two words to clear up a grammatical error. The Finance Committee recommends ought to pass with amendment. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

SENATOR LARSEN: I rise to remind you that although this bill, I agree with the Finance committee, the problem with this bill is not its finance implications on the state, but in fact, the chilling affect this bill has on people going to the polls to vote. You may recall that we had a pretty significant debate on this when it went to Finance. We are now in the last stages of passing this bill out of the Senate, and I ask people to carefully consider the chilling affect that this has on those who go to the polls to vote and register at that time. I remind you that it declares penalties,

financial penalties, that will in fact, not only frighten its intended chilling affect on students voting, it also includes threatening language that says that you may be forfeiting your benefits or your rights including the right to vote in another state. What does that mean, forfeiting your benefits or rights? What if you are perhaps someone who it is your first time voting. What does that mean to you? Does it mean that you will lose other rights? Does it mean that as a student that you are going to lose scholarships? Is that the intent of this? Do we want to pass an affidavit process that makes people question their right to vote? Do we want to pass penalizing language like this that will in fact, encourage young people to leave the polling place, even if they may have had intent to vote, because they are afraid of the consequences. We all know that we are trying to encourage young people at an early age to vote. I don't believe that this encourages, I believe that this discourages both young people and new voters who would be very hesitant to sign something that at the end of the affidavit assures them that if they somehow made a misstatement, they could be imprisoned or be fined \$2,000. I urge you to think seriously about the consequences of this vote and to vote no on the ought to pass with amendment motion. Thank you. I also just raise the issue of whether this passes the equal protection clause standards in *Newburger v Peterson*; was perhaps a family member of one of our colleagues questioning the constitutionality of indefinite intention tests and in fact, ruling that they are unconstitutional? I urge you to consider all of those issues and to vote no on ought to pass.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise in opposition to the bill. I was opposed when it went to Finance. My vote against it was not recorded, but it should be in Finance. I just want to give this brief iteration. In the city of Manchester, at Manchester Central High School, we are privileged to speak over fifty different languages. Those people have come into our city and are becoming active American citizens. They have come to our city. They have come to our country, because of the fact that they perceive that freedom is available to them and the ability to make their way in life, is enhanced by coming to our country. Those are the people that we want voting on Election Day. Those are people that we want participating in the process. Let me tell you that my grandmother never voted. She never voted. She came to this country when she was 16 years of age, but never ever voted because she was afraid of the process. Because in those days, if you were an Italian American living in the community, you were basically ostracized from the process. I think that the fear that is instilled by this amendment does that to these new American citizens. When they read an affidavit and they say, "if you tell a lie" blah, blah, blah and so forth and so on, a Class A misdemeanor and a \$2,000 fine. They are unsure to begin with. Some of them are working. Working through our ESL program to improve their ability to communicate, and yet, we as a country that wants maximum participation in the voting process, throw up impediments. Now I can remember when in one town in a district that I represented, in order for you to register to vote, you had to produce your passport. Now graciously we have changed that and have come a long way in terms of voter registration. I think that this is taking one step backward. I appreciate your thinking about this, because of the fact that we are a nation of immigrants. We are bringing more and more immigrants to this country to be absorbed in the American way of life. In order to appreciate the American way of life, that path to participation should be one that is convenient, not one that is blocked by impediments. Thank you Mr. President.

SENATOR SAPARETO: Thank you Mr. President. I rise in support of this bill. To vote is not just a duty, but it is also a privilege. What we are saying is that you have to be...you have to live here. You have to be a resident and you have to be 18 years of age. Now we can't help the fears that people have when they go into the booth to vote or take the effort to go down to vote, but it is also that duty. All that we are doing is reaffirming that basic concept that you have to be part of us. You have to be part of the community. You have to live here and you have to be of age. We are not...if people are afraid because they have to sign their name to a piece of paper, I think that pales in comparison to those soldiers that we have at war, fighting overseas and what they have to do to protect our freedoms. This merely reaffirms honesty, that is all. I don't see anything wrong with this. I can use a specific example. I had a friend of mine that was here during the election, that came here from Texas. He talked about the abuse of voting down there where bus loads of people from Mexico come in to vote because there is no identification on these people. There is nothing to confirm that they are actual residents there. In fact, my friend who came here from Texas, could have gone in when I went to vote, and signed up and said that he was any person and gone in and voted himself. Now you can't tell me that this doesn't occur, because my wife has gone in to vote and has found that she had already voted. She was very surprised at this, because she hadn't been there, she had been working all day. These things do occur, so I see nothing wrong with just reaffirming a simple basic element that we should understand when we go to vote. If people are afraid to go down because they have to put their name on something, then shame on them.

SENATOR BELOW: Thank you Mr. President. While I share some concerns of some of my colleagues that this may give some potential voters pause when they go to register, I don't think that the language of the proposed affidavit says anything that is not true or that the people shouldn't know. So I think that there may be occasions when people should perhaps pause and just be clear about what they are doing, so in balance, I think that there is some value to this and I support SB 15. Thank you.

SENATOR CLEGG: Thank you Mr. President. I listened to my colleagues speak and I wonder what in this bill would now make someone fearful to vote? It says that they understand that they must be 18 years of age. They must be a United States citizen and they must be domiciled in the city or town that they are registering to vote in. Then it goes on to explain, for those people who may have trouble understanding, it tells them that they can only claim one state and one town as your domicile. I haven't found anything that would make someone fearful. Then it says that by voting today, they acknowledge that they are not domiciled in any other state or any other town. That shouldn't scare anyone so far. Then it says if they were domiciled in another city or town that they could be entitled to vote in those elections by absentee ballot. Once again, we are not scaring anybody, we are telling them here is how you can do it "if" you are not really a resident of this town. Then, so that no one can be confused, we tell them that if New Hampshire is your domicile, you are subject to the laws of the state of New Hampshire which apply to all residents including requirement to register your motor vehicle. That you have to apply for a driver's license. So it is taking out the ignorance. It is saying to people, by the way, when you do this, here is all of the other stuff that you need to do too, just in case you get stopped by a police officer and you have been living here for a year, you have to do that, the laws says that. We

didn't make that a new law – that already exists. Then there is a section that I don't think that anyone would find this scary. If I have any questions as to whether I am entitled to vote, I am aware that a supervisor of the checklist is available to address my questions or concerns. How much more friendly can we make the registration process? We have gone above and beyond to explain to people, here is what it is, be aware that when you register here, you are required to do other things and also be aware that by leaving your former state, you may lose some benefits. Yes, that does target the kids in college, like the kid from Alaska who registered to vote in the state of New Hampshire, whose mother called the Speaker of the House and said, "What did you do to my son"? We didn't do anything, but by declaring himself a resident of the state of New Hampshire, I guess he lost his scholarship from the state of Alaska. That is what we are trying to say. I believe that the supervisors of the checklist know that is what we are trying to say. I believe that by them looking at this, they have no way of coming out of there saying, "I didn't understand". Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 16-FN**, establishing the governor's incentive and reward program. Finance Committee. Ought to pass, Vote 5-0. Senator Boyce for the committee.

**SENATOR BOYCE:** Thank you Mr. President. I move SB 16 ought to pass. This bill establishes the Governor's Award Program for state employees to receive recognition for suggestions to improve government operations. Currently, this issue is included in the Governor's budget. I would ask you to vote yes on the ought to pass motion and then I will later ask for a tabling motion. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 18-FN**, relative to vehicle stops at railroad grade crossings. Finance Committee. Ought to pass, Vote 4-1. Senator D'Allesandro for the committee.

**SENATOR D'ALLESANDRO:** Thank you Mr. President. I think that this is one that we can all agree on. I move SB 18 ought to pass. This legislation requires that the driver of a school bus stop at all railroad crossings. The judicial branch has determined that the fiscal impact of this bill is minimal assuming that not many prosecutions will be brought forth. Please join me by voting ought to pass on this bill. Thank you very much. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 19-FN**, relative to notification of groundwater contamination and requiring a certain report from the department of environmental services. Finance Committee. Ought to pass, Vote 5-0. Senator Below for the committee.

**SENATOR BELOW:** Thank you Mr. President. I move SB 19 ought to pass. This legislation requires the Department of Environmental Services to notify property owners when drinking wells that are within 500' of contaminated groundwater, which have certain contaminants.



The cost of the notification would be reimbursed by dedicated funds and the bill codifies current practice. Please join the Finance Committee by voting this bill ought to pass.

SENATOR GATSAS: Senator Below, the notification factor that was in legislation of having to report to... in writing, confirmation of contamination of five parts per million is still in effect?

SENATOR BELOW: Will remain law. That law remains in effect. The bill was previously amended to take out that repeal.

SENATOR GATSAS: Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 23-FN**, allowing veterans the right to purchase credit in the retirement system for certain service in the armed forces. Finance Committee. Ought to pass, Vote 5-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you Mr. President. I move SB 23 ought to pass. This bill would allow certain veterans who are active members in the retirement system to purchase as an additional service, certain time in the armed forces. The Finance Committee has established that this legislation has no fiscal impact because the employee pays the entire cost of their prior service. Please join me in voting ought to pass for this very important piece of legislation. Thank you Mr. President.

SENATOR BARNES: Senator D'Allesandro, would you tell us how much it would cost someone to join the system?

SENATOR D'ALLESANDRO: I think that it is based on the amount of time that they have to buy back in, Senator Barnes. But that is going to be borne by the individual.

SENATOR BARNES: I understand that, but I am kind of curious as to how much it is going to cost someone. I understand that it is based on time. So do you have some numbers to tell us if it is one year, two years, three years, what the amount of money might be?

SENATOR D'ALLESANDRO: I don't. I don't have that information.

SENATOR BARNES: Thank you.

Senator D'Allesandro offered a floor amendment.

Sen. D'Allesandro, Dist. 20

**April 2, 2003**

**2003-1097s**

**10/04**

### **Floor Amendment to SB 23-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** allowing veterans the right to purchase credit in the retirement system for certain service in the armed forces, relative to the purchase of certain service resulting from an employer's failure to enroll an employee, and including harbor master in group II of the retirement system.

Amend the bill by replacing all after section 3 with the following:

4 Retirement System; Membership; Employer Fault; Purchase of Credit. Amend RSA 100-A:3, VI(d)(1) to read as follows:

(d)(1) In the case of an employer which through its own fault, and not the fault of the employee, failed to enroll an eligible employee at the

time such employee became eligible for membership in this retirement system or a predecessor system, the employer and not the employee shall pay the cost of the actuary's statement obtained under this subparagraph. The actuary's statement shall be based on the product of the member's annual rate of compensation at the time of buy-in, multiplied by the sum of the member and employer contribution rates in effect with respect to the member at the time of buy-in, multiplied by the number of years of prior service credit bought. In addition, if such employee has not received final approval of the board before July 1, 1989, to receive credit for such service, the employer shall pay 1/2 of the amount determined by the actuary and the employee shall pay 1/2. Upon payment, and with the approval of the board, the member shall receive credit for prior service. The amount paid by the employee for prior service credit under this subparagraph shall be credited to the member annuity savings fund, and the amount paid by the employer shall be credited to the state annuity accumulation fund. ***An employee may elect to provide the funds to pay the costs required of the employer if the employer is unable to provide the funds under this subparagraph.***

5 Retirement System; Group II; Harbor Master Added. Amend the introductory paragraph of 100-A:1, VII(a) to read as follows:

(a) A police officer, conservation officer of the fish and game department, ***harbor master***, or inspector of the state liquor commission who: 6 Effective Date.

I. Sections 1 - 3 of this act shall take effect July 1, 2003.

II. The remainder of this act shall take effect upon its passage.

003-1097s

#### AMENDED ANALYSIS

This bill allows veterans who are active employees in the retirement system to purchase as additional creditable service certain time in the armed forces of the United States.

This bill allows an employee who is purchasing certain service due to an employer's failure to enroll to pay the employer's share of costs if the employer cannot.

This bill also adds the harbor master to the definition of permanent policeman for purposes of membership in group II of the retirement system.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise to offer a floor amendment. I brought it up to the Clerk and some copies should be made, but while those are being made, Mr. President, I would like to speak to the amendment. What this amendment does is it allows an employee who through no fault of their own, through the employers fault, was not brought into the system, they failed to enroll an eligible employee at that particular time. What this does is, it allows that employee, that employee may elect to provide the funds payable for the entire costs if the employer is unable to provide that money. So an employee who was not enrolled in the system through no fault of their own, may buy into the system for that time, when they were not enrolled by the employer, and pay all of the costs themselves. That is the first part of this amendment. The second part is an individual, the harbormaster is added to the group II retirement system because the harbormaster is a police officer, a conservation officer, a fish and game, and now the harbormaster who has to be a certified police officer, gets into the group II retirement system. Both of these items have no fiscal impact because they have no cost to the state, the cost is borne by the employee. Thank you Mr. President.

SENATOR GREEN: Thank you Mr. President. I rise in support of the amendment. It is consistent with the original bill. It does not cost the state anything as far as contributions. I think that it is appropriate for us to approve the amendment.

**Recess.**

**Out of recess.**

### **MOTION TO TABLE**

Senator Green moved to have **SB 23-FN** laid on the table.

**Adopted.**

### **LAIID ON THE TABLE**

**SB 23-FN**, allowing veterans the right to purchase credit in the retirement system for certain service in the armed forces.

**SB 27**, extending the kindergarten construction program. Finance Committee. Ought to pass with amendment, Vote 3-2. Senator Below for the committee.

**Senate Finance**  
**March 25, 2003**  
**2003-0981s**  
**04/10**

### **Amendment to SB 27**

Amend the title of the bill by replacing it with the following:

AN ACT extending the kindergarten construction program and making an appropriation therefor.

Amend the bill by replacing all after the enacting clause with the following:

1 Kindergarten Construction Program; Program Extended. Amend RSA 198:15-r, I to read as follows:

I. There is established in the department of education a kindergarten construction program. For the ~~[7-year]~~ period starting July 1, 1997, and ending June 30, ~~[2004]~~ **2006**, the commissioner of education shall make grants available to eligible districts that currently do not operate a public kindergarten program to cover 75 percent of the actual cost of construction of kindergarten facilities, exclusive of site acquisition and core facilities. Grants shall also cover the cost of initial equipment needed to operate a kindergarten program.

2 Appropriation; Kindergarten Construction. Amend 1997, 348:6 as amended by 2001, 287:3 to read as follows:

348:6 Appropriation; Kindergarten Construction. A sum not to exceed ~~[\$28,500,000]~~ **\$31,500,000** is hereby appropriated to the department of education for the purposes of constructing kindergarten classrooms. This appropriation shall be nonlapsing and in addition to any other appropriation to the department of education; provided, however, that the department of education shall not approve grant requests for such purposes for more than:

I. \$6,000,000 in the biennium ending June 30, 1999.

II. \$5,000,000 in the fiscal year ending June 30, 2000.

III. \$5,000,000 in the fiscal year ending June 30, 2001.

IV. \$6,500,000 in the fiscal year ending June 30, 2002.

V. \$2,000,000 in the fiscal year ending June 30, 2003.

VI. \$4,000,000 in the fiscal year ending June 30, 2004.

**VII. \$3,000,000 in the biennium ending June 30, 2005.**

3 Kindergarten Construction Program; Bonding Amount Amended. Amend 1997, 348:7, I as amended by 1997, 351:56, as amended by 2001, 287:4 to read as follows:

I. To provide funds for the appropriation made in section 6 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of [~~\$28,500,000~~] **\$31,500,000** and for said purpose may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-A; provided that bonds or notes shall not be issued in excess of:

- (a) \$6,000,000 in the biennium ending June 30, 1999.
- (b) \$5,000,000 in the fiscal year ending June 30, 2000.
- (c) \$5,000,000 in the fiscal year ending June 30, 2001.
- (d) \$6,500,000 in the fiscal year ending June 30, 2002.
- (e) \$2,000,000 in the fiscal year ending June 30, 2003.
- (f) \$4,000,000 in the fiscal year ending June 30, 2004.
- (g) \$3,000,000 in the biennium ending June 30, 2005.**

4 Repeal. The following are repealed:

I. 2001, 287:6, II, relative to the prospective repeal of the kindergarten construction program.

II. 2001, 287:7, I, relative to the effective date for the prospective repeal of the kindergarten construction program.

5 Effective Date. This act shall take effect 60 days after its passage.

**2003-0981s**

#### AMENDED ANALYSIS

This bill extends the kindergarten construction program from June 30, 2004 to June 30, 2006 and repeals the prospective repeal of the program which would have taken effect June 30, 2004. The bill also makes an additional appropriation of \$3,000,000 to the department of education for the kindergarten construction program.

SENATOR BELOW: Thank you Mr. President. I move SB 27 ought to pass with amendment. This bill extends the Kindergarten Construction Program, which has been an important initiative to leverage, to encourage communities to start new kindergarten programs. Many towns have already taken advantage of this program and now there are only 19 towns left in the entire nation, all of them in New Hampshire, that do not offer public kindergarten. This amendment allows the program to continue for another two years beyond 2004 with a very modest amount of funding to give a few of the towns that have not adopted yet, another chance at kindergarten in the 75 percent support to build new facilities. I would just like to read three sentences from a recent editorial in the *Valley News* that gives this some context. They wrote, "just to put this in perspective, some educational districts in other parts of the country are debating whether to require full-day kindergarten or to offer public educational services to four-year-olds. Meanwhile, states face a new federal requirement under the No Child Left Behind Act that all students read at grade level by the end of third grade. School districts that have public kindergarten have been able...to work with kindergarten for four years will have a much easier time meeting that requirement. Someday perhaps, New Hampshire will be able to boast that all of its students are offered public kindergarten, thereby achieving a status that has prevailed in the rest of the country since 1989." The \$3 million that this would authorize, in initial bonding in the next biennium, as I said, is a small portion of what would be needed to achieve kindergarten in all the

remaining towns, but it would be enough to, I think, encourage the districts that have or are working on plans to adopt kindergarten, to have a shot at having the opportunity that other districts have had, to develop their programs. I would urge you to join me in voting yes on ought to pass with amendment. Thank you Mr. President.

SENATOR BARNES: Thank you Mr. President. I would like to remind some of the folks that were here two years ago in the Senate Chamber that, who the bigmouth Senator was that fought like heck to get it extended for another two years. We had some problems over in the House at the tail end of it, but that was taken care of. A certain member of the House wanted to scuttle it. This program now has been in place for five years. Five years. Senator Below mentioned that there were 19 towns in the whole United States of America that don't have it. Hopefully, Senator Below, it is only 18. We passed it in Raymond, but we are still playing around with the legality of it. However, at the deliberative session in Raymond, on television and in front of a whole mess of people, I got up and I told those people, the people in Raymond, that I would not support extending the Kindergarten Program for another two years to make it a total of seven years. I told them and I think the words that I used "Do it or get off the pot. Vote for it or forget it, and pay for it yourself." Raymond would have picked up, I think, around \$750,000 for kindergarten. So if this...if in Raymond, the thing falls through, it is going to cost Raymond for the taxpayers to do it themselves, about \$650,000 or thereabouts. Now when this all came about, I sent letters out. When I got up on this floor, had letters back from most of the 19 towns. I didn't hear back from all of them, but from most of them, I heard back. There were three towns, and one of them a rather large town in the state of New Hampshire, who told me as the Chairman of Finance, to keep my money and use it for better purposes, they would never vote for kindergarten, and they didn't need the state to help them with it, because they didn't want it. Two other towns did the same thing. People go out to vote, and I believe it was over in Hooksett. Was it Hooksett or Goffstown? It was Goffstown. One of Senator D'Allesandro's towns that lost by 20 something votes again, I believe, in Goffstown. Doesn't that tell you that the people in Goffstown don't want kindergarten? Why should we tuck away another \$3 million that we could use on other items? We are scratching our heads for money. If the citizens of the towns don't want it, why should we keep that money out there if they keep saying, no, no, no? All of the towns except Raymond, this last time, I think that there were four or five of them, said no, the citizens have spoken. We don't want your damn money. We don't want kindergarten. We like the private kindergartens that we have. They are doing a better job than we do publicly. That is what the people are saying. I have got to tell you, if the Raymond thing fails, and I am on record as saying it, so be it. I will still fight for it in the town of Raymond, but the taxpayers will have to pick up a little more money if they decide to do it. I have listened to the voters for five years. What are you going to do, have this thing for twenty years? Why not put them in perpetuity like we do for the LCHIP, have it there forever. I say the heck with it. The time has been enough. The towns don't want it. They have had five years to do it. The heck with it. Let the citizens pay for it themselves if they decide that they want it. This legislature shouldn't be tucking that \$3 million away that we can certainly use in a lot of other places that we are going to find out between now and June. Thank you Mr. President.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise in support of the legislation. When we talk about a time frame, you know, how much time is enough? Each one of us will say that there is an ample amount of time in our life to do certain things. Some will say that we need more time. At the end of our time, we always say that we need more time. So it just appears to me, that yes, we have 19 towns. We know of two towns that took votes in the last election. We know that it was very close in Raymond. I think that they had a recount. I know that it was very close in Goffstown, they had a recount. There are still other towns who have manifested a desire to do kindergarten. The amount of money in the budget is \$3 million. It is not a lot of money, but it is still an incentive to do something that all of us know provides a very, very positive impact on the life of a child. We all know that between kindergarten and three, an individual, a young individual gets the base of their learning. If they are not up to grade level by grade three, they never get there. So isn't it incumbent upon a public body to reach out and say that this deserves every opportunity, and if you don't want it at the end of that time, as some communities have said, they are done, they are finished, but what about the other communities that have manifested a desire to do it? It just seems to me that it is good public policy. Five years, seven years, it is there. It should be there. There are still towns that would like to take advantage of it. We have, as I have said, we have cut the amount of money down each time. It is \$3 million at this point in time. When we looked at all of the towns that didn't have kindergarten in Finance, it appeared that the \$3 million would basically cover all of those that had not voted for it at this time. I think that it is a good piece of legislation. It is good policy and I understand that there is a financial situation. I think that all of us understand that, but we ought to try to do what we believe is the right thing. At stake, are the young people of our state, because we know, we know. In Manchester in 1922 we made that decision to have kindergarten. We did it on our own without any help from the state. So I think that extending is not a bad thing to do. It is the right thing to do and I fully support it. Thank you Mr. President.

SENATOR BARNES: Senator D'Allesandro, would you believe that I have two or three would you believes?

SENATOR D'ALLESANDRO: I would believe that you have two or three.

SENATOR BARNES: Would you believe that I am a believer and this is the year? You can see by my necktie. It has only been 80 something years, but I am still hanging in there for this?

SENATOR D'ALLESANDRO: I believe that.

SENATOR BARNES: Would you believe that Raymond was not even close, we won by over 300 votes on kindergarten?

SENATOR D'ALLESANDRO: I believe it.

SENATOR BARNES: Okay. Would you believe that as legislators, as much as I do believe in kindergarten, that I worked my butt off in my community to get that passed by over 300 votes, and I might ask Senators sitting here, and the people sitting over there in that hall, in their communities that don't have it, to go out and bust their fannies to convince the voters that they should have it? And would you also believe, \$3 million is a drop in the bucket for hopefully, 18 towns left, because Raymond would have gotten about \$900 and something thousand out of it and that was just one town? So if you are covering...and you have \$3 million, you are covering perhaps three towns out of the 19 and that

is covering the whole 19? So next year when you come back, bring \$3 million in hoping that some of those towns are going to do it. As legislators, we all believe in the kindergarten program, so get out there in your community that doesn't have it, and work on it in the community, and let the people know how important it is and get it passed in your community instead of keeping the caravan here. Would you believe?

SENATOR D'ALLESANDRO: I certainly believe that Senator Barnes. I would say that my record of public service indicates that I have worked hard in my communities.

SENATOR BARNES: 1922. You did a good job on that one.

SENATOR D'ALLESANDRO: I wasn't around in 1922, Jack, but if I were around in 1922, I would have been an advocate for kindergarten.

SENATOR BARNES: I know you would have.

SENATOR D'ALLESANDRO: But I have been around since the day that I was born, and I think that I have done a reasonably good job as being a public servant. Thank you Mr. President.

SENATOR ESTABROOK: Thank you Mr. President. I think that there is clearly a reason why 49 out of 50 states have mandatory kindergarten and are working on mandatory pre-school programs. It is very clear from the research that the more that we invest in early childhood, the less we will have to spend down the road to correct the things that weren't built in those years. I think that when this legislature established the kindergarten construction program, it was our way of acknowledging that fact. We were not in a position where we wanted to override local control and make kindergarten mandatory, but we felt that there was certainly a way that we could encourage that to happen. I think that should continue to be the goal. The goal should be to bring kindergarten to the greatest possible number of New Hampshire's children. Moving forward with this bill, keeping the construction program alive is one of very few things that this state does to reach the goal of having children ready to learn when they arrive at first grade. It certainly is not a time to be making a step backwards in that regard. Thank you.

SENATOR GREEN: I rise in opposition to our report in the committee. As you will note there is a three to two vote and I voted against it in committee and I continue to feel that we have to, at some point, realize that you have to say that there is a limit to the amount of money that you are willing to dangle out there for people to do what you think that you would like them to do. People will only do what they want to do, even if you dangle money and this proves it. I have no reason to believe that there isn't enough money in the account currently, for anyone that adopts it that is fighting over it at least from the last town meeting. I also want to say that this does not mean that school districts cannot get building aid to help them with their construction of kindergarten as part of any school construction program, so it is not as though you are saying that we are not going to do anything. It is just saying that \$3 million is in here with no commitment for it. I am having a hard time finding money for the things that we "have" to do and are committed to do. I think that \$3 million is a lot of money by the way. I don't think that it is a small amount of money. We have a very serious budget issue. I have a hard enough time finding money for those things that we are going to really want to struggle over with what we have got to do. We shouldn't be fighting over things that we do not have to do. I would urge you to vote against

this additional \$3 million and let those districts who want to get kindergarten in the future, they have had ample opportunity, like Senator Barnes said. They have had five years. It is about time that they know that their decision is going to be on their nickel, with the states help for building aid. Thank you.

SENATOR O'HEARN: Thank you Mr. President. I rise in support of the Finance Committees three to two vote of ought to pass with amendment on this bill. As we look back over the past and what we did, we recognized that kindergarten was an important part of our child's education, but the reason that we recognized it was important. We were looking for public kindergarten for those communities that wanted it. We were looking for public kindergarten for those communities because we were trying to find some consistency for first grade so that those first grade teachers were all working with the same background for those children. Yes, there are communities that don't want it because they provide enough private kindergarten and they are pleased with it, it works well in their system. This isn't for them. If you know how wonderful it is to live in New Hampshire, we have had a tremendous influx of people here in the past few years. Our school districts are struggling with building aid for grades 1-6 or 1-12. Their first obligation is for elementary and secondary schools, and kindergarten comes second. We had a group of people from a part of the state that said that they just had so many people that they are taking care of their obligations for grades 1-12 first. They are completing it and hoping to put in kindergarten next year, but we need to go to a vote first. They have asked us to continue this for at least another year so that they could work on it. You have to recognize, especially where I live, I see people moving West, continually moving West and expanding. Kindergartens are important. My district is not calling for any need of kindergartens. Not all of my schools in my district have kindergarten, and they are not concerned with putting in kindergartens, but this is other places in the Southern tier that certainly have had a tremendous growth and are looking for that opportunity to be able to put in kindergarten. Thank you.

SENATOR PETERSON: Thank you Mr. President. I rise in support of this for the reason that I was told when we had our Senate orientation that if there is something that I had to say that I should say it. I would like to just talk a little bit more expansively and from personal experience on this matter. I am in support of this legislation because I think that it is very important that this body, this state, this legislature, encourage early childhood education. I would like to give an example of why: In my hometown of Peterborough, we had a two or three decade battle, and finally put in public kindergarten. It was done prior to the incentives, which we now provide. My own children were attending a fine kindergarten in our area which was a private kindergarten, then became a private pre-kindergarten once we had a public kindergarten. There are many towns in this state who feel that they can provide for this through the private kindergartens that they have and they don't need to have a public kindergarten. The other day I picked up the paper and I noticed with great pride that my eleventh grader was on the high honor roll. She is in a class of about 300 students. There were a number of names on the high honor roll, of course not as many were in high honors and so forth, and I began to notice that the names that were on that list, were all with her in pre-kindergarten, again and again and again. Not each and every one, but a great majority of them were in this pre-kindergarten. I would like to thank Sheila Kirkpatrick who runs that



pre-kindergarten. It is called South Peterborough Kindergarten in Peterborough where all my children have gone through. She is a certified public school teacher who went out and got into early childhood education and brought these kids to the kindergarten program in Peterborough, ready to learn, with a running start. Now you look at later on, who is on the high honor roll, who is doing well. I have to say that there has to be a connection there. There has to be a connection because the evidence is so clear. What I would say to those communities in the state who are considering this is, do it. Step forward and do it. Let's encourage them to do it because early childhood education is so important. It is important for all of our citizens not merely those who are in the favorable position where they can afford it easily. Thank you Mr. President.

SENATOR BARNES: Senator Peterson, would you believe that kindergarten isn't something new? That in 1936 I graduated from kindergarten and now I am making \$92 a year, it really helped me a great deal?

SENATOR BOYCE: I rise in opposition to the committee amendment. When this program was started, I believe five years ago, the statistics were that over 90 percent of five-year-olds in the state attended kindergarten. The reason that was brought in was because some people felt that since about less than half of those were private kindergarten, that there was something wrong with the system. The people who believed that only a public school can provide a good education believed that the state should spend millions of dollars to encourage towns to put the small private kindergartens out of business. This program has been eminently successful in that aspect; however, the statistic is still that something over 90 percent of five-year-olds in this state, attend kindergarten. We spent millions of dollars to do what our previous Governor wanted us to do, which was to employ NEA union teachers to teach kindergarten instead of private kindergartens, which are not terribly well unionized. We have given the towns that wanted to do this, many years to do this, and we are still offering them through the building aid, the opportunity to do this. I have consistently voted against this program in extending it. I am again voting against this programs extension and I will continue as long as it continues to be extended. Thank you.

SENATOR GATSAS: Thank you Mr. President. The 2-2 has already been heard from. I guess I am the 3-2 and I voted in favor. I ask my colleagues to support the ought to pass motion. I agree with Senator Barnes that we have given everybody an opportunity. I agree with my colleague Senator Green that it is \$3 million. I think that every one of us here when we look at the future of our state and our country, that those 18 schools that may be looking, it is important to them. We should give them the opportunity, and one more opportunity is not going to hurt anybody. We have already done it five times. Maybe if we give that one child that one opportunity, maybe Mr. President, we might see him standing there someday, being the President of the Senate. So the \$3 million may be a little bit of a task for us to go out and find it and make different allocations in the budget, but I think that when we are talking about children, I think that we should make that as our first priority. Thank you.

SENATOR LARSEN: You have heard from quite a few of us now and I rise to urge you to seriously consider what this state stands for. This state stands for educating its people. This state should be standing for educating and giving its people the best opportunity possible to succeed. That is what the American dream is. That is what the New Hampshire dream is for every parent. I have been in this Chamber for nine years.

As I look back on what we accomplished, you today, can take away one of our greatest accomplishments if you defeat this kindergarten construction program. What we are doing when we offer a community kindergarten is holding out an opportunity to better their children's opportunities to succeed in school. We are seeing, and we saw just recently, we have had discussions on how many more are entering New Hampshire's prisons. The clear reliance of one's ability for someone to have an education and to succeed at that education starts in kindergarten. I understand our good Senator Barne's frustration with the community that has been offered it over and over again and doesn't take it, but the state, like a good parent, should continue to push what is right, and what is right is that we continue to say that every child in this state should have an opportunity for kindergarten and not just in a private kindergarten, because the private kindergartens are not offering the sequence of educational learning opportunities that every child should have so that when they arrive in first grade, they are prepared at the same level. As far back as eight years ago, I heard much of this same debate. At that time, we heard that the private kindergarten did a very fine job, but what the first grade teachers were saying, and it had nothing to do with whether a teacher was in the union. Those teachers were saying that it was important that every child arrive knowing similar things, prepared to hear the same, to be at the same level of understanding of what their numbers are, what their letters are, socialization procedures, that help people succeed in their first grade so that they don't feel like failures as they move on through the school year. There is clear evidence that people who are in our prison system have not...have a greater rate of not being in kindergarten. It sounds odd, but it is true. So what you are doing today is what you have an opportunity to do today, is to offer a very small, very small carrot that continues to encourage what is right for our state and what is right for our state is not to be the state that continues to be the only state in the union that has 19 school districts without public kindergarten. We are the only state in the union that has that incredible label upon us. It is a joke in the rest of the nation that New Hampshire somehow doesn't value kindergarten. Other states have been looking at preschool, have been looking at other learning opportunities...early learning opportunities so that people might succeed. We need to bring our state up to that level of expectations and encouragement of all of our citizens to seek the greatest learning opportunity that they can get. It is a very small construction program. We offer a very small carrot. It is a critically important one. I urge all of you to think about when you go home at the end of having served your term as public servants here, what are you going to look at? Are you going to look at that you offered...that you made a change for New Hampshire that put us permanently into a status of offering the best educational opportunity that we can to our citizens? This is your chance today.

SENATOR SAPARETO: Thank you Mr. President, just being brief. I know that we have been discussing policy issues about this because I see this bill coming out of Finance and have made my policy decision on a previous vote on this bill. I can't help but make the observation that we tend to pay an awful lot of attention to those seven digits figures on the financial matters, but maybe we are not paying as quite as proportional to the eight digits figure and above. Just that observation.

SENATOR GALLUS: Thank you very much Mr. President. I rise in opposition to the committee report. I don't think that anyone here is against kindergarten. If they are, I would like them to stand at this time. I think

that we are all for our children. I represent most of the poorer towns in the state of New Hampshire. When this particular law was passed, every school in Coos county already had kindergarten. Most of the towns that didn't have kindergarten at the time, didn't have public kindergartens, had access to private schools. Private pre-schools and private kindergartens. Most of those towns appeared not to be interested in public kindergarten. With the current financial situation that we are facing here, I think that we have to get real. This is feel-good legislation to say that we all want to pass this bill. It is \$3 million in taxpayers money that other areas of the budget, I think, need. I thank you Mr. President.

SENATOR MORSE: Thank you Mr. President. With all due respect to the community that I represent in Salem, it is no joke to us that we don't have public kindergarten. Matter of fact, a lot of us in that town, work to find ways that we can fill that ten percent gap. I can tell you quite strongly that I believe in kindergarten. I am working right now to get kindergarten at our Boys Club expanded. But I don't believe that the community decided not to have public kindergarten in several votes because it was a joke to the rest of America. I have a great discomfort with saying that because those communities are still working hard to solve the same problem that every one of you want to solve here with public kindergarten. I would just respect the fact that they want to do it in a different way. Thank you.

SENATOR MARTEL: Thank you Mr. President. I, too, support kindergarten, but how many times have I heard in the past that constituents and family members and friends came up to me and said, well my children have gone to pre-school and now they are in kindergarten, and what are they really learning? In many cases what they were being taught in kindergarten, they had already been taught in pre-school. They said it was redundancy for three or four years or two or three years I should say, of their education process. Really, it seemed to these people that kindergarten was much more then just a playground, and for children to be unattended. I disagree with that, but that is the kind of focus on this from some people, especially those who send their children. I just wanted to put another spin on this. I just hope that everybody is able to face this and we realize what we are going to be doing here for the state. Thank you.

SENATOR BARNES: Thank you Mr. President. I want you all to know that eight or nine years ago I sat in this very chair and was one of the Republicans that voted for kindergarten. I hope that no one thinks that I am anti-kindergarten. I think that if you were here two years ago, you would know that was not true. I want to say that Senator Peterson and the folks over there in Peterborough are very fortunate to have had a private kindergarten that did a good job. One of the things that I, throughout my discussions in Raymond was the fact that some of these kindergartens are nothing more than babysitting services. Some of them are great, like in Peterborough, and some others are nothing but babysitting services. How do I get that information? I get the information from talking to the principal of the elementary school in Raymond, New Hampshire. She sees all of the kids come in. Something else that was said here in the conversations, not everyone, and that was my pitch in Raymond, there is roughly every year, think of this, every year in Raymond, roughly 20 children that go into that first grade that haven't had any kind of private kindergarten that is available to them, three or four different places. Now do you know why? I know why. Because the majority of their

parents can't afford to send them so that is one of the big reasons kindergarten should be in place every place, because everyone is not Andy Peterson, everybody isn't Jack Barnes or his son that can afford to send their kids to private kindergarten. What about the poor buggers that go into the first grade? What about the teachers in the first grade? It takes them 6 months or a whole year to get these kids up and running to have them to sit down and pay attention with some attention span. That is all part of the situation. But I am going to make a recommendation. I have heard a lot of good speeches, pro and cons here today on kindergarten. I think that Senator Gallus hit the nail right on the head; he didn't ask for a raise of hands, but he is right. There is not one of the 24 of us in here that are against kindergarten in the state of New Hampshire. I am sure that there is not a soul in here that is against it. You know, if I were a Senator, and I had a town... I wish that I had the list in my hand, but I don't. I know that one is Senator D'Allesandro's town, and I know that Salem is one. But if I were a Senator and I really wanted to see kindergarten, I would get ahold the state Reps in that town and I would have a task force of maybe four or five Senators coming in and talk about the great things that kindergarten can do for their children. To come in and help the community. We are all sitting here saying, "we want to help the children." Then why don't we go out and help our fellow Senator and our fellow Representatives and our fellow school board members and our fellow selectmen and get it done? Why don't we do that? We all talk about it. Nobody came to Raymond to help Jack get kindergarten. I didn't ask, but nobody said, "oh Jack, I want to help you." Why don't we put a crash team together. I would be more than happy to go and use my big mouth and tell people why they should have kindergarten. You are damn right they should have kindergarten. But for how long? Perpetuity...put it in this bill, in an amendment, in perpetuity we will have this \$3 million there like we do for LCHIP. Thank you Mr. President.

SENATOR GREEN: I didn't know this was going to get into a policy about kindergarten. I thought that we were talking about what kind of money that we were going to be looking at to do what people thought they wanted to do. I think that it goes without saying, as a former professional educator, in both the school, teacher, school principal, and as mayor of a community that I have always publicly supported kindergarten. There has never been an issue in my mind. What I have a real hard time with is we are here debating the financial issue. We are saying that we are going to put \$3 million and we are going to fund it for those people who don't want it. I don't understand that thought process. If you want to fund something that people really want and really need the money, then we should be debating that. But why are we standing here talking about \$3 million that people don't want. I don't understand the thinking. They are going to be looking for more than \$3 million come the end of this session, and then we are going to have some real problems. I am just saying that it doesn't make logical sense to me, this conversation about funding \$3 million for people who don't want it. They have had the opportunity many times to get it and they haven't taken it. How long do you do this? I don't understand the thought process. I am sorry. Thank you.

SENATOR CLEGG: Thank you Mr. President. I agree with my colleague. We should be debating the financial aspects. Now we all know that we are having a problem with a tight budget. Revenues aren't where they are supposed to be or where we thought they would be. We have to find some money. On one side, we have some real needs and wants. In this bill, we are dangling \$3 million out there to try and entice communities

to do something that they have had five years to do and I will bet you that more than half of those 18 have already had it on the ballot at least once. My community, three times. It has soundly been defeated each time. Not everybody thinks that government should mandate how things get done. Our community has quite a few private kindergartens. It seems to work. Maybe it works in others. But are we really going to sit here and send \$3 million to a project because we want them to have public kindergarten, while we are waiting on the other side with people on the waiting list? How about the \$3 million for the provider payments? We see rising costs in insurance premiums because we keep cutting what we pay in provider payments. We are not dangling \$3 million over there and I am sure that they would love to take it. Instead, we are dangling \$3 million to try to convince 18 communities to put in kindergarten. Am I the only one that sees that as a problem? We have had five years. Those who want it have it, those who don't, don't. They will still be able to get building aid, but it is time to shut down some of these programs and fund the ones that we really need to fund. Thank you Mr. President.

**Recess.**

**Out of recess.**

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise to speak a second time in support. I would just like to address a few things that have come up in the discussion because I think that it is very important that all of us understand some things. First of all, A) it is not an appropriation. It is bonding. So you can't use that money for something else. That is number one. I think that is an imperative. But I think that the second imperative addresses something that Senator Barnes said. He said "five years". Do you know what I thought? I thought, you know, five years is a long time. It really is a long time. But you know, we didn't get the Civil Rights Act passed in the United States for 100 years, but were we going to say that nobody should have civil rights because we didn't pass it in the first year, the second year of the third year? And how long did it take us to get the Voting Rights Act passed? Didn't that take almost 100 years? And what makes one think that a time is an imperative to getting the right thing done? We spend our lives trying to get the right thing done. That is a lifetime responsibility. If we believe that a child's education is a fundamental in a free society, then we fight to make that happen. There are those that have financial resources, they can send their children to a private kindergarten. There are those who do not have financial resources. That is why we have public education. This nation made a commitment to public education because we perceived that the basic tenet of a free society is an educated population. We made that commitment. It just seems to me that an extension is something that is absolutely in the best interest of the constituents that we represent. We all work hard in our communities to try and make things happen. I did participate in the effort to get kindergarten in Goffstown. The Goffstown kindergarten vote missed by half a dozen votes. Half a dozen votes in a very large community. One of the largest towns in the state of New Hampshire. So the effort was there. When you have three or four votes dividing the number, you know that there are a number of people that want kindergarten. I think that it is the right thing to do. We all want to do the right thing. We have an opportunity to do that. I realize that finances are a very important issue. No one, I think, is more concerned about that than everyone in this body and certainly me. But you

have to do the things where the dollars are going to do the best for your constituents. I strongly support this bill and ask my colleagues to think deeply and move ought to pass. Thank you.

SENATOR MORSE: Thank you Mr. President. Senate Green pointed out that this is truly an issue with finance. I mean there isn't anyone in this room that wouldn't support legislation in the future if Salem wanted to come in and put in kindergarten, they wouldn't vote to approve it at that time. I truly believe that it is about something that is not being asked for at this point. If those communities come in back in the future and want it, I honestly believe that this body would support it. I think that is how we should look at this at this point. Thank you.

SENATOR BELOW: Thank you. It being the lunch hour, I rise to speak a second time with trepidation. I think that this is very important and I think that there are a couple of things that haven't been said. On my part, I want to be clear that all of my districts have either had kindergarten or have already taken advantage of this program. This is not about rewarding or punishing communities or voters or taxpayers who haven't succeeded in getting a two-thirds vote for their local bonding authority to get the 75-state match. This is about the 10 percent of the children in the state that aren't getting kindergarten education. We have heard that about 90 percent of the kids get education, but 22 percent of the population lives in communities without public education. That indicates that close to half of the children in communities without public kindergarten aren't going to private kindergarten, probably because the families cannot afford the cost. So this is about the children and the families that can't afford private kindergarten and want to have public kindergarten. Another key point is we, enacting this legislation, did not say that the communities have to get rid of their private kindergarten programs. In fact, we said you can fund those private kindergarten programs with public dollars and keep them operating to provide the 50 or 60 percent of the population that is going to those private kindergartens publicly funded and simply use this program to build the classrooms for the 40 percent of the population that isn't going to kindergarten now. So that is an option for communities, to keep the private kindergartens publicly funded and extend it for the other children. As Senator D'Allesandro said, this \$3 million is not money that is available for those other needs that Senator Clegg listed. It is only bonding authority if the districts don't vote for it, it won't be...the bonds won't be issued, it won't be needed. Every year more districts put this question to their voters. Anticipators next year are Auburn, Litchfield, Windham, Hampstead and Fremont. They may not all do it, but they are all working towards that goal. Other communities, almost all of these communities that don't have kindergarten now are high growth southern tiered communities that are struggling to keep up with their 1-12 facilities. We all may say that we are for kindergarten, but if we don't vote to pass this, then what we are doing is we are allowing the whole incentive program to lapse. There is a middle ground. If you are not sure about the \$3 million, we could vote this ought to pass and offer a further amendment to take out the \$3 million, but not lapse the program, so that the existing capacity can at least carry forward to the extent that it is not used. That is the very least, I think, we should do. Thank you.

SENATOR MARTEL: Thank you Mr. President. Senator Green, is it not true that this SB 27 really does not focus on kindergarten?

SENATOR GREEN: I don't understand the question, this is a kindergarten bill.

SENATOR MARTEL: I understand that it is a kindergarten bill, but we are talking about \$3 million okay, that really doesn't exist.

SENATOR GREEN: That is right.

SENATOR MARTEL: So my question is to you, is that we are not in any condition, are we, to add \$3 million to this budget that we don't even have?

SENATOR GREEN: In my opinion, no Senator.

SENATOR MARTEL: Thank you.

SENATOR KENNEY: Thank you Mr. President. I hadn't had the opportunity to speak and everyone else has so I feel that I should. I probably wouldn't have done that a half hour ago. I am not one to really speak on the floor that much, and when I do, I feel that I need to participate. I rise against SB 27. My reason for that is that I really thought that the kindergarten construction program was much like a federal program, in that it was seed money for five years. In much like the School-to-Work-Program, seed money, eventually dries up. Now my son is three and a half years old. We live a quarter of a mile from a kindergarten building. When this bill passed here many years ago, and the Governor signed it, Governor Shaheen, I went to my school board and said, "there is a wonderful kindergarten building down the street. We need to fix it up." They agreed. So we went down there and I mentioned that there was money that we could go into the kindergarten construction program. At that particular time, we started sitting down with the Department of Education. That particular building was eligible. What was not really eligible was because of the building codes, the floor space, and the doorways. It had to be reconfigured in order to meet the requirements for the construction of the kindergarten program. I remember Senator Johnson was in on this dialogue, we even got the Department of Education involved. Ultimately, in the short term, we couldn't come with the solution to see if we were eligible for this building aid. Ultimately, they were trying to negotiate at that point, the school board and the community members of Wakefield were so frustrated, so heartbroken, that they wouldn't be eligible for that, that they had to go through all of this red tape, to try and get this kindergarten construction program through. With that experience in mind, and knowing the fiscal state of affairs in the state of New Hampshire, it is my belief that I am not going to support this. I think that while the legislature will be in session in future years, that we address it at that time, and at this time, we need to look at the fiscal matters of this state. So I join in with my colleague Senator Green to strike down SB 27.

Senator Barnes moved the question.

**Adopted.**

**Question is on the adoption of the committee amendment.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Cohen.**

**The following Senators voted Yes: Below, Odell, Roberge, Peterson, O'Hearn, Foster, Larsen, Gatsas, Sapareto, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Eaton, Clegg, Barnes, Martel, Morse, Prescott.**

**Yeas: 12 - Nays: 12**

**Amendment failed.**

**MOTION TO TABLE**

Senator Below moved to have **SB 27** laid on the table.

**Adopted.**

**LAIID ON THE TABLE**

**SB 27**, extending the kindergarten construction program.

**Recess.**

**Out of recess.**

**SB 38-FN-A-L**, authorizing special number plates for firefighters. Finance Committee. Inexpedient to legislate, Vote 5-0. Senator Boyce for the committee.

**MOTION TO TABLE**

Senator Boyce moved to have **SB 38-FN-A-L** laid on the table.

**Adopted.**

**LAIID ON THE TABLE**

**SB 38-FN-A-L**, authorizing special number plates for firefighters.

**SB 46-FN**, relative to dedicated funds. Finance Committee. Ought to pass with amendment, Vote 5-0. Senator Boyce for the committee.

**Senate Finance**

**March 25, 2003**

**2003-0980s**

**05/09**

**Amendment to SB 46-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** repealing the meat inspection account and the poultry inspection account.

Amend the bill by replacing all after the enacting clause with the following:

1 Meat Inspection; Costs of Inspection; Reference to Special Account Removed. Amend RSA 427:32 to read as follows:

427:32 Costs of Inspection; Limitation. The cost of inspection rendered under the requirements of this subdivision shall be borne by the state, except that the cost of overtime and holiday work performed in establishments subject to the provisions of this subdivision shall be at such rates as the commissioner of agriculture, markets, and food may determine, and shall be borne by such establishments. Such costs shall be collected by the commissioner. ~~[and shall be paid into a special account, and]~~ All employees of the department who are required to make inspections at any time after working 40 hours per week or after working 8 hours per day shall be paid ~~[from said account]~~ at the rate of time and a half. Labor performed on Saturdays, Sundays and holidays shall also be compensated at the rate of time and a half. Costs collected by the commissioner for such premium pay work shall be available without fiscal year limitation to carry out the purposes of this section.



2 Poultry Inspection; Costs of Inspection; Reference to Special Account Removed. Amend RSA 428:8 to read as follows:

428:8 Costs of Inspection; Limitation. The cost of inspection rendered under the requirements of this subdivision shall be borne by the state, except that the cost of overtime and holiday work performed in establishments subject to the provisions of this subdivision shall be at such rates as the commissioner of agriculture, markets, and food may determine, and shall be borne by such establishments. Such costs shall be collected by the commissioner. ~~[and shall be paid into a special account; and]~~ All employees of the department who are required to make inspections at any time after working 40 hours per week or after working 8 hours per day shall be paid ~~[from said account]~~ at the rate of time and a half. Labor performed on Saturdays, Sundays and holidays shall also be compensated at the rate of time and a half. Costs collected by the commissioner for such premium pay work shall be available without fiscal year limitation to carry out the purposes of this section.

3 Repeal. The following are repealed:

I. RSA 6:12, I(eeeeeeeee), relative to the meat inspection account.

II. RSA 6:12, I(fffffff), relative to the poultry inspection account.

4 Effective Date. This act shall take effect July 1, 2003.

**2003-0980s**

### AMENDED ANALYSIS

This bill repeals the meat inspection account and the poultry inspection account.

SENATOR BOYCE: Thank you Mr. President. I know in my stack of papers I have notes on this bill, but it doesn't matter. Thank you Mr. President. I move SB 46 ought to pass with amendment. Originally this bill required that 25 percent of the revenue of all dedicated funds be deposited in the general fund. At hearing time, the prime sponsor offered an amendment that erased the bill and repealed the meat and poultry accounts which are now regulated by the federal government. Please join me in voting ought to pass on this bill with amendment. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 60-FN**, relative to voluntary certification of persons installing or servicing propane gas or heating oil equipment. Finance Committee. Ought to pass with amendment, Vote 5-0. Senator Boyce for the committee.

**Senate Finance**

**March 25, 2003**

**2003-0982s**

**08/01**

### Amendment to SB 60-FN

Amend RSA 153:16-b, III as inserted by section 1 of the bill by replacing it with the following:

III. The state fire marshal, with the approval of the commissioner of safety, shall adopt rules, pursuant to RSA 541-A, relative to the establishment of fees for voluntary certification under this section. After the first year of this program, such fees shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the previous fiscal year.

**SENATOR BOYCE:** Thank you Mr. President. I move SB 60 ought to pass with amendment. This legislation establishes a voluntary certification program for persons installing or servicing heating fuels or heating fuels equipment. This legislation will also establish a position in the state fire marshal's office to oversee his certification program. The individual will be charged for the volunteer certification program, which will fund this position. The amendment clarifies the wording of the bill. Please join me in voting this bill ought to pass as amended. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 64-FN**, relative to updating the drought management plan. Finance Committee. Ought to pass, Vote 5-0. Senator Green for the committee.

**SENATOR GREEN:** Thank you Mr. President. I move that SB 64 ought to pass. This bill requires that the Department of Environmental Services, the Office of State Planning, and the Office of Emergency Management update the Drought Management Plan and make recommendations to the legislature. The Finance Committee found that this bill has no financial impact. The committee voted unanimously ought to pass and I hope that you join me in doing the same. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 86-FN**, relative to disclosure of certain information about child fatalities and near fatalities resulting from abuse and neglect, and relative to accreditation of the department of health and human services by the Council on Accreditation for Children and Family Services. Finance Committee. Ought to pass, Vote 4-1. Senator Below for the committee.

**SENATOR BELOW:** Thank you Mr. President. I move SB 86 ought to pass. This bill provides that the Department of Health and Human Services will receive the resources to meet the standards of the Council on Accreditation for Children and Family Services. This legislation will also allow DHHS to be held accountable for deaths or near deaths in child abuse cases. The fiscal note indicates that the accreditation can be accomplished at this time, by using existing appropriations. Please join me in voting this bill ought to pass. Thank you.

**SENATOR MARTEL:** Thank you Mr. President. I wish to thank not only the committee, but also the sponsor and co-sponsors of this bill. This bill has been long in coming. I have been proud to be the person who is the prime sponsor on this bill and bring it forth in order to protect children. What happened to Cassidy Bortner should never happen again. There are some problems, okay, that caused her death and we have to alleviate this. This bill begins the process of doing that and maybe begins the process of healing, so that no other child who is beaten or even killed, like in the case of Cassidy Bortner, would ever...it would never allow that to happen again. I urge everybody to please vote ought to pass on this bill so that we can send it forward in order to get this signed into law. Hopefully we can begin the process of working hard with the Department of Children and Family Services and other people in order to solve these problems. Thank you very much Mr. President.

SENATOR BOYCE: Thank you Mr. President. May I ask a question of the Finance Chairman? Senator Green, I am trying to refresh my memory on what the actual fiscal note on this was. Is the one that is attached to the bill showing \$55,000 in the first year and \$14,000 in the second year, is that correct?

SENATOR GREEN: That is the correct numbers.

SENATOR BOYCE: Thank you.

**Question is on the committee report of ought to pass.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Below, Green, Flanders, Odell, Roberge, Eaton, Peterson, O'Hearn, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Estabrook, Morse, Prescott, Cohen.**

**The following Senators voted No: None.**

**Yeas: 24 - Nays: 0**

**Adopted unanimously.**

**Ordered to third reading.**

**SB 91**, extending the committee to study eminent domain proceedings and adding certain duties. Finance Committee. Ought to pass, Vote 5-0. Senator Gatsas for the committee.

SENATOR GATSAS: Thank you Mr. President. I move SB 91 ought to pass. This bill extends the reporting date of the study committee on eminent domain proceedings. This bill has no fiscal impact. Please join the Finance Committee by voting this bill ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 129**, relative to the board of tax and land appeals and eminent domain cases. Finance Committee. Ought to pass, Vote 5-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move SB 129 ought to pass. This bill authorizes the Board of Land and Tax Appeals to use its staff appraisers to evaluate eminent domain cases. This bill was submitted at the request of the committee to study eminent domain proceedings and is supported by the Board of Land and Tax Appeals. This bill has no fiscal impact so please join the Finance Committee in voting to pass this bill. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 140-FN**, establishing an optional renewal period for licenses to carry a pistol or revolver. Finance Committee. Ought to pass, Vote 5-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move that SB 140 ought to pass. This legislation changes the renewal period for licenses to carry from four to five years and allows the, and I am going to change the text here, it says "licensee" to expire. I think it is "license" to expire at the same time that their driver's license expires. This may provide a reminder

without creating a database. The Finance Committee found the fiscal impact of this legislation to be minimal so please join me in voting this bill ought to pass. Thank you.

SENATOR BARNES: Thank you Mr. President. Senator Boyce. What is minimal?

SENATOR BOYCE: Minimal?

SENATOR BARNES: It is like "elderly", what is minimal?

SENATOR BOYCE: That the fiscal impact is nil because what happens is the license fee is prorated, so if your drivers license expires this year, and your permit expires next year or in two years, then you would be getting a three-year permit the next time so that you will pay three-fourths the cost of the regular permit, so that the next license would expire on the same five-year anniversary as your drivers license. It prorates the license fee. So there really wouldn't be any cost at all unless it is the mental activity time of the police chief in figuring out when the next expiration should be on that first renewal.

SENATOR BARNES: Thank you Senator Boyce. Now I know what "minimal" is.

SENATOR BOYCE: Sure.

**Adopted.**

**Ordered to third reading.**

**SB 142-FN**, relative to advertisements on utility poles and highway signs. Finance Committee. Ought to pass, Vote 6-0. Senator Below for the committee.

SENATOR BELOW: Thank you Mr. President. I move SB 142 ought to pass. This legislation strengthens RSA 236:75 by giving the owners of utility poles, telephone booths, and highway signs the ability to remove advertisements at the expense of the owner. It also creates a misdemeanor penalty. According to the fiscal note, the fiscal impact to the judicial council and the judicial branch is expected to be minimal. Please join me by voting this bill ought to pass. Thank you.

SENATOR BARNES: I heard "minimal" from Senator Boyce, could you tell me what your definition of "minimal" is, Senator?

SENATOR BELOW: It is based on the number of prosecutions that will be brought. Very few cases have been brought historically, under this RSA. Some more RSA's. On the assumption, "on the assumption that the number of prosecutions in this area will not increase the impact on the judicial branch will be minimal. Likewise the judicial council would have to defend indigent persons charged for this misdemeanor." But likewise it will be whatever it is, but it is expected to be minimal.

SENATOR BARNES: Well this is an interesting day. We have had two different definitions of "minimal".

**Adopted.**

**Ordered to third reading.**

**SB 145-FN-A**, relative to the duties of the board of trustees of the department of regional community-technical colleges. Finance Committee. Ought to pass, Vote 6-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you Mr. President. I move SB 145 ought to pass. The 1995 reorganization of the Community Technical

Colleges left the trustees without the fiscal ability to support the school's foundation. The fiscal impact of this legislation will only be the use of non-general fund revenue. Please join the Finance Committee by voting this bill ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 149-FN**, establishing criminal penalties for the use of a credit card scanning device or reencoder to defraud. Finance Committee. Ought to pass, 5-0. Senator Below for the committee.

SENATOR BELOW: Thank you Mr. President. I move SB 149 ought to pass. This bill establishes a criminal penalty for the use of a credit card scanning device or reencoder. The Finance Committee has concluded that the fiscal impact on this legislation would be minimal. I should say "indeterminable" and pending, of course, it's minimal. Please join the Finance Committee in voting this bill ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 163-FN**, relative to the procedures of the health services planning and review board. Finance Committee. Ought to pass, Vote 5-1. Senator Green for the committee.

SENATOR GREEN: Thank you Mr. President. I move that SB 163 ought to pass. This legislation increases the limit on total expenditures and administrative fines from \$500,000 to \$750,000 due to the cost of inflation. With this bill, ambulatory surgical centers will be assessed an annual fee which will increase revenue to the department. Please join the Finance Committee by voting this bill ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 202-FN-A**, relative to funding for kidney dialysis patients and making an appropriation therefor. Finance Committee. Inexpedient to legislate, Vote 4-2. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move that SB 202 be inexpedient to legislate. The Finance Committee feels this legislation should be part of the budget and not an individual piece of legislation. Furthermore, as drafted, the \$30,000 would be going into the catastrophic aid fund, which is the source of funds for the kidney dialysis patients. The Governor's budget already includes a 30 percent increase in this line for catastrophic aid. That is nearly four times the amount that is asked for in this bill. So it was the committee's feeling that the money was already in the budget as proposed by the Governor and we did not need to pursue this legislation. So I ask you to join me in voting this bill inexpedient to legislate. Thank you.

SENATOR LARSEN: As you may recall, I was a sponsor of SB 202 and in fact, the committee recommended this bill ought to pass. I understand the...and I in fact brought to the attention of the Finance Committee, that the catastrophic illness program in the budget as it comes, hopefully comes to us, has an increase in it. But I would hope that in voting, you will recognize the need for increasing transportation aid costs to those who are suffering from the most severe illnesses and those whose financial need is greatest. That is what the purpose of the

catastrophic illness program is. I hope that as we consider this through the budget process that you will recognize the need to keep this money at an adequate level to allow for what you all recognized, I hope, the need to increase the mileage reimbursement so that volunteers do continue to volunteer to drive kidney dialysis patients. There are 680 currently on dialysis in the state. They have to go three times a week. They need transportation assistance, often-times they are increasing impoverished by the need to go to dialysis treatment. So there is a genuine need to keep this money in the catastrophic illness program. I felt that it would be good to send a message that the Senate supported this kidney...increase in kidney funding, funding for kidney transportation, kidney dialysis transportation. I urge you to remember this as we work through the budget. Thanks.

SENATOR MARTEL: Thank you Mr. President. I applaud Senator Larsen for bringing this bill to my committee and yes our committee voted on this ought to pass motion. I have been given the assurance that this bill definitely has the money in the funds in the Governor's budget under the catastrophic care. Having an increase in that line item, in order to cover this entire project. This is a very important project for these people who need these dialysis treatments, have a necessity to find a way to get to their dialysis treatments. It is a sad epitaph that some people have different stages of having dialysis treatments, but all of them have the same problem and it is transportation. So I thank the Finance Committee for looking at this and making sure that the line-item is in the Governor's budget and seeing that, I would support the inexpedient to legislate motion that the Senate President and the Senate Finance Committee voted on.

### **Committee report of inexpedient to legislate is adopted.**

**SB 216-FN-A**, relative to the developmental services priority waiting list and making an appropriation therefor. Finance Committee. Ought to pass, Vote 6-0. Senator Below for the committee.

SENATOR BELOW: Thank you Mr. President. I move SB 216 ought to pass. This bill makes an appropriation to the Department of Health and Human Services to reduce the priority one waiting list to adults with developmentally disabilities by a total of about 40 percent over the next biennium. This is an important goal for us to work towards to eliminate the waiting list over a reasonable period of time. I expect a motion to table this bill so that we can deal with it in the budget as the budget comes forward and I would support for that. Thank you Mr. President.

### **MOTION TO TABLE**

Senator Clegg moved to have **SB 216-FN-A** laid on the table.

**Adopted.**

### **LAIID ON THE TABLE**

**SB 216-FN-A**, relative to the developmental services priority waiting list and making an appropriation therefor.

**SB 226-L**, increasing the homestead exemption. Finance Committee. Ought to pass, Vote 6-0. Senator Odell for the committee.

SENATOR ODELL: Thank you Mr. President. I move SB 226 ought to pass. Senate Bill 226 will increase the homestead exemption from \$50,000 to \$100,000 to protect homeowners from telephone and credit card scams

and other frivolous lawsuits that seek to exploit a homeowner's equity by fraudulent means. This bill has no fiscal impact on state, county or local expenditures. Please join the Finance Committee by voting this bill ought to pass. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 11-FN**, establishing new special justice positions in the Manchester, Concord, and Nashua district courts. Finance Committee. Inexpedient to legislate, Vote 5-0. Senator Odell for the committee.

**SENATOR ODELL:** Thank you Mr. President. I move SB 11 inexpedient to legislate. This bill establishes new full-time special justice positions in the Manchester, Concord, and Nashua district courts. The committee felt that this bill causes the legislature to overstep their boundaries by creating special justice positions in the court system. A similar bill was also killed in the House. Please join me in voting this bill inexpedient to legislate. Thank you Mr. President.

**SENATOR LARSEN:** While my community is perhaps the smallest of those requesting additional special justices, it clearly...we heard that there was a need for the special justices to be assigned to carry the case load in Manchester, Nashua and Concord courts, which is increasing dramatically. We heard that the special justice for...essentially we heard that the fiscal impact of this is very small and that it would in fact, relieve the court system of what is currently overburdened case loads with a lack of adequate justices to cover the time required. This was a request of the Concord district court and I know that Nashua and Manchester were equally interested to see this special justice assigned. Since it had no significant financial impact, I am surprised to find that the Finance Committee is recommending this inexpedient to legislate.

**SENATOR O'HEARN:** Senator Larsen, are you aware that the justices in the Nashua district are aware of a constitutional problem here and that they have asked to withhold this legislation?

**SENATOR LARSEN:** That was not conveyed to me. I knew that Concord had a request as well and they didn't contact me regarding that.

**SENATOR O'HEARN:** Okay. Thank you.

**SENATOR LARSEN:** Thanks.

**SENATOR PETERSON:** Thank you Mr. President. Senator Larsen, having had this bill in the Judiciary Committee previously, just to give you some information, it is my understanding that the person for the Concord district court has already been elevated by executive order and so your area has been taken care of in that manner. The constitutional question is whether the legislature can elevate a special justice to a permanent justice without it going through Governor and council as would be the normal process, so this is my understanding of why this is before us now with an inexpedient to legislate recommendation, irrespective of all of those good points, I am going to vote against it. Thank you.

**SENATOR D'ALLESANDRO:** Thank you Mr. President. Just for clarification on the constitutional question: At one time I was a member of the Executive Council and the power to nominate judges is that of the Governor with the consent of the Executive Council. What we had developing here by this elevation was a constitutional question as to who

really had the appointing authority for a judge, when you took a special judge and made him a full-time special judge, via the legislative process, were you violating the constitution because that indeed is the purview of the Executive Council and the Governor. That was really the question that had to be considered. As a result of talking with our legal counsel, our decision was to inexpedient to legislate this bill, based purely on those constitutional grounds. We certainly know that we need help in Manchester, we need help in Concord and we need help in Nashua, but this was a constitutional question that we didn't have to get involved with at this point. So I think that was the reason after consultation with our legal element, we decided that that was the right way to go. Thank you Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**SB 29-FN-A-L**, refunding certain meals and rooms taxes paid by the city of Manchester. Finance Committee. Ought to pass with amendment, Vote 5-0. Senator D'Allesandro for the committee.

**Senate Finance**

**March 31, 2003**

**2003-1056s**

**08/09**

**Amendment to SB 29-FN-A-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 Reimbursement of Meals and Rooms Taxes Paid by the City of Manchester. Notwithstanding any other provision of law, the state shall reimburse the city of Manchester up to \$44,293 in addition to the amount calculated to be reimbursed under RSA 78-A:26. Reimbursement shall be contingent upon submission of documentation from the city of Manchester to the department of revenue administration supporting that up to \$44,293 of meals and rooms tax payments have been made by the city to vendors. Such additional sum, up to \$44,293 as certified by the department of revenue administration, shall be paid at the time distribution under RSA 78-A:26 is made for fiscal year 2004.

2 Effective Date. This act shall take effect upon its passage.

SENATOR D'ALLESANDRO: Thank you Mr. President. I move SB 29 ought to pass with amendment. The genesis of this bill was a situation in Manchester where the welfare director inadvertently paid the room and meals tax on homeless people that she was placing. After she left office the new welfare commissioner discovered this error and contacted the state about a refund. The only way to handle this refund was to bring a bill forward and the technical correction was that the city has to produce the validation of this expense, and the state will reimburse this up to \$44,293. But it must receive validation from the city of Manchester prior to making this reimbursement. I think that the city of Manchester is entitled to the funds and I hope that you will join me in voting ought to pass with amendment on this bill. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**



**SB 69-FN-A**, combining the career incentive program and the nursing leveraged scholarship loan program within the department of postsecondary education, and establishing a workforce incentive program within the department of postsecondary education, and making an appropriation therefor. Finance Committee. Ought to pass with amendment, Vote 5-0. Senator Green for the committee.

**Senate Finance**

**March 31, 2003**

**2003-1055s**

**04/10**

**Amendment to SB 69-FN-A**

Amend the title of the bill by replacing it with the following:

**AN ACT** combining the career incentive program and the nursing leveraged scholarship loan program within the department of postsecondary education, and establishing a workforce incentive program within the department of postsecondary education.

Amend the bill by deleting section 6 and renumbering the original section 7 to read as 6.

**2003-1055s**

**AMENDED ANALYSIS**

This bill consolidates the career incentive loan program and the nursing leveraged scholarship loan program into the workforce incentive program which contains a forgivable loan component and a loan repayment program for individuals who work in designated shortage areas.

**SENATOR GREEN:** Thank you Mr. President. I move that SB 69 ought to pass with amendment. This bill is a housekeeping bill for the Postsecondary Education Commission. The committee agreed that we should delete the appropriation in the bill because this issue is currently part of the Governor's budget. Please join me in voting this bill ought to pass with amendment. There are still some questions in the bill, whether or not the amount has actually been taken out of the budget, out of the bill. So with that in mind, until we get it clarified, I would move that we table it or have a tabling motion. Thank you.

**MOTION TO TABLE**

Senator Gatsas moved to have **SB 69-FN-A** laid on the table.

**Adopted.**

**LAIID ON THE TABLE**

**SB 69-FN-A**, combining the career incentive program and the nursing leveraged scholarship loan program within the department of postsecondary education, and establishing a workforce incentive program within the department of postsecondary education, and making an appropriation therefor.

**SB 70**, creating the Great Bay Estuary district and making an appropriation therefor. Finance Committee. Ought to pass with amendment, Vote 5-0. Senator Green for the committee.

**Senate Finance**  
**March 31, 2003**  
**2003-1063s**  
**06/01**

**Amendment to SB 70**

Amend the title of the bill by replacing it with the following:

AN ACT establishing a commission to study implementing a recommendation of the New Hampshire estuaries project management plan and making an appropriation to the Strafford regional planning commission and the Rockingham planning commission for certain related projects therefor.

Amend the bill by replacing all after the enacting clause with the following:

**1 Commission Established.**

**I. There is established a commission to study:**

(a) The feasibility of implementing a recommendation of the estuaries project management plan that the discharge from area wastewater treatment plants be combined for discharge further offshore.

(b) Ways to aid in achieving restoration of the estuary habitat in a manner that is compatible with the National Estuary Restoration Act of 2000.

(c) Creation of a watershed district in the Great Bay Estuary area and the rivers that flow into it.

(d) Funding strategies for creating and maintaining effective partnerships between the federal government, the state government, local community governments and the private sector to fund and assist in the Great Bay estuary habitat restoration project.

(e) The need for joint public wastewater facilities for collection and discharge of treated wastewater and ways to achieve the construction, maintenance and management of these facilities.

**II. Participation in this commission shall be voluntary.**

**2 Membership and Compensation.**

**I. The members of the commission shall be as follows:**

(a) One member of the senate, appointed by the president of the senate.

(b) One member of the house of representatives, appointed by the speaker of the house.

(c) One member, appointed by the governor.

(d) One member from each participating town or city along the Great Bay estuary, river basin, and the estuarine watersheds appointed by the governing body of the town or city.

(e) One member of the Strafford Regional Planning Commission, appointed by the commission.

(f) One member of the Rockingham Regional Planning Commission, appointed by the commission.

(g) One Strafford County commissioner, appointed by the county commission.

(h) One Rockingham County commissioner, appointed by the county commission.

(i) The commissioner of the department of environmental services, or designee.

(j) The reserve manager of the Great Bay National Estuarine Research Reserve.

**II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.**

### 3 Duties. The commission shall study:

I. The feasibility of implementing a recommendation of the estuaries project management plan that the discharge from area wastewater treatment plants be combined for discharge further offshore.

II. Ways to aid in achieving restoration of the estuary habitat in a manner that is compatible with the National Estuary Restoration Act of 2000.

III. Creation of a watershed district in the Great Bay Estuary area and the rivers that flow into it.

IV. Funding strategies for creating and maintaining effective partnerships between the federal government, the state government, local community governments, and the private sector to fund and assist in the Great Bay estuary habitat restoration project.

V. The need for joint public wastewater facilities for collection and discharge of treated wastewater and ways to achieve the construction, maintenance, and management of these facilities.

VI. The merits of forming a watershed district among area towns to provide for the collection, conveyance, and disposal of treated wastewater in the deep waters of the Piscataqua River or the Atlantic Ocean and for other water-related purposes and an appropriate name for any districts recommended.

VII. Funding strategies that a watershed district might use in conjunction with the state and federal governments for the benefit of the Great Bay Estuary and its environment.

4 Notice of First Meeting; Chairperson; Quorum. The senate member shall create a list of commission members and shall call the first meeting of the commission. The members of the study commission shall elect a chairperson from among the members. The first meeting of the commission shall be held within 45 days of the effective date of this section. Eight members of the commission shall constitute a quorum.

5 Report. The commission shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2003.

6 Appropriation; Strafford Regional Planning Commission and Rockingham Planning Commission.

I. The sum of \$1,000,000 is hereby appropriated to the Strafford regional planning commission and the Rockingham planning commission for the biennium ending June 30, 2005 to be placed in an account established by the Strafford Regional Planning Commission for the purposes delineated in paragraphs II and III of this section

II. An amount of \$500,000 is allocated for the first phase, facilities planning. The facilities plan shall evaluate the needs and alternatives for regional wastewater collection/disposal facilities in light of the area's unique demographic, topographic, hydrologic, and institutional characteristics. The facilities plan shall assess and compare the present worth values of capital, operational, and maintenance costs of feasible alternatives, and identify the least-cost alternative which may be implemented from legal, institutional, financial, and management standpoints. If additional funding is needed to complete the defined scope of the first phase, funds from the second phase may be allocated to the first phase for this purpose.

III. An amount of \$500,000 is allocated for the second phase; preliminary design and water quality modeling or testing. In the event that the first phase has funds remaining after it is completed, funds from the first phase may be allocated to the second phase.

7 Bonds Authorized. To provide funds for the appropriation made in section 6 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of \$1,000,000 and for said purposes may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with the provisions of RSA 6-A. Payments of principal and interest of the bonds and notes shall be made from the general funds of the state. The bonds shall be 20 year bonds.

8 Effective Date.

I. Sections 1-5 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect July 1, 2003.

2003-1063s

### AMENDED ANALYSIS

This bill establishes a commission to study certain recommendations of the New Hampshire estuaries project management plan and other issues related to the Great Bay estuary. This bill also makes an appropriation to the Strafford regional planning commission and the Rockingham planning commission for the preparation of a facilities plan, preliminary design, and water quality modeling or testing.

SENATOR GREEN: Thank you Mr. President. I hate to do this two times in a row, but I am going to end up tabling, but I would like to read the reason why we are going to pass this. I am going to table after this, but this legislation is very important to my Senate district. It is an issue that has been brewing for some time now. With the high cost associated with complying with federal EPA standards for water treatment and disposal into receiving bodies of water, a number of communities along the sea-coast will face mandates to update their facilities in the near future. This is providing a drive to examine other options such as this project. The amendment changes the bill to include a commission, which was a suggestion by the Department of Environmental Services. This bill is a capital appropriation that is bonded by \$1 million, which is broken into two stages. The first stage is \$500,000 for the facility planning. The second stage allows \$500,000 for the preliminary design, water quality modeling or testing. I believe that this initial funding from the state would be namely "seed money," that could be phased out as the project gains momentum. I also want to thank Senator Prescott for helping on this bill. Jointly we have come to an agreement that this is a bill that we both recognize is needed in our area. I look forward to you at some time in the future supporting this bill. So at this time...

### MOTION TO TABLE

Senator Flanders moved to have **SB 70** laid on the table.

**Adopted.**

### LAIID ON THE TABLE

**SB 70**, creating the Great Bay Estuary district and making an appropriation therefor.

**SB 85-FN**, making certain revisions to the special education laws. Finance Committee. Ought to pass, Vote 5-0. Senator Odell for the committee.

SENATOR ODELL: Thank you Mr. President. I move SB 85 ought to pass. This bill makes technical changes to the process of disbursement of catastrophic aid to school districts. This legislation ensures that the practice and statute for catastrophic aid are compatible with each other.

The Finance Committee has concluded that there is no fiscal impact to this legislation. Please join me in voting this bill ought to pass. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 115**, establishing a commission to study implementing a recommendation of the New Hampshire estuaries project management plan and establishing the estuary alliance for sewerage treatment. Finance Committee. Ought to pass with amendment, Vote 6-0. Senator Green for the committee.

**Senate Finance**  
**March 31, 2003**  
**2003-1061s**  
**01/05**

**Amendment to SB 115**

Amend the title of the bill by replacing it with the following:

**AN ACT** increasing the fees for review of subdivisions and waste disposal systems by the department of environmental services and making an appropriation for implementing information technology and regulatory process improvements.

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose. The general court finds that the current fees for sewage disposal system and subdivision plan review under RSA 485-A are inadequate to cover the costs of conducting the reviews and of operating the program to assure compliance with statutory and regulatory requirements.

2 Fees; Subdivision and Waste Disposal System Reviews. Amend RSA 485-A:30, I to read as follows:

I. Any person submitting plans and specifications for a subdivision of land shall pay to the department a fee of ~~[\$80]~~ **\$150** per lot. Said fee shall be for reviewing such plans and specifications and making site inspections. Any person submitting plans and specifications for sewage or waste disposal systems shall pay to the department a fee of ~~[\$80]~~ **\$140** for each system. Said fee shall be for reviewing such plans and specifications, making site inspections, ~~and for~~ the administration of sludge and septage management programs, **and for establishing a system for electronic permitting for waste disposal systems, subdivision plans, and for permits and approvals under the department's land regulation authority.** The fees required by this paragraph shall be paid at the time said plans and specifications are submitted and shall be deposited with the treasurer as unrestricted revenue. For the purposes of this paragraph, the term "lot" shall not include tent sites or travel trailer sites in recreational parks which are operated on a seasonal basis for not more than 9 months per year.

3 Appropriation. The sum of \$1 is hereby appropriated to the department of environmental services for the biennium ending June 30, 2005 for the purpose of implementing information technology and regulatory process improvements. This appropriation is in addition to any other funds appropriated to the department. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

4 Effective Date. This act shall take effect July 1, 2003.

**2003-1061s****AMENDED ANALYSIS**

This bill increases the fees for subdivision and waste system review by the department of environmental services and makes an appropriation to the department for implementing information technology and regulatory process improvements including electronic permitting for waste disposal systems, subdivision plans, and other permits and approvals under the department's land use regulation authority.

**SENATOR GREEN:** Thank you Mr. President. I would just direct you to the amendment in the yellow calendar. You will notice that the title does not lend itself to the content of the bill. The bill is a complete amendment of the original bill. I move that SB 115 ought to pass with amendment. As amended, this bill increases the fees for the review of subdivisions and waste disposal systems by the Department of Environmental Services. Currently, the fees are insufficient to cover the costs of conducting those reviews. The amendment also appropriates \$1 to DES for the purpose of implementing information technology improvements. The committee felt that this issue is already addressed in the Governor's budget but would like to keep the appropriated fund open. Please join the Finance Committee in voting this bill ought to pass with amendment. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 128-FN**, transferring the bureau of vital records and health statistics from the department of health and human services to the department of state. Finance Committee. Ought to pass with amendment, Vote 4-1. Senator Green for the committee.

**Senate Finance**

**March 31, 2003**

**2003-1046s**

**01/09**

**Amendment to SB 128-FN**

Amend RSA 5-C:2, I as inserted by section 2 of the bill by replacing it with the following:

I. There is established within the department a division of vital records administration under the supervision of a director of vital records administration. The secretary of state, with the approval of the governor and council, shall appoint the director of vital records administration. In addition to the title of director, the director shall also be known as the registrar of vital records. The director of vital records administration shall be academically and technically qualified to hold the position. The director shall be a citizen of this state or become a citizen of this state within one year of the director's appointment.

Amend RSA 5-C:5, I as inserted by section 2 of the bill by replacing it with the following:

I. The secretary of state shall adopt rules relative to facts which must be recorded relative to births, marriages, divorces, deaths, and fetal deaths. At a minimum, the rules that are adopted relative to the facts included on the forms and data fields maintained electronically shall include all facts contained on the national standard certificate

forms developed by the National Center for Health Statistics, United States Department of Health and Human Services. As revisions to the National Center for Health Statistics standard certificates are made, the secretary of state shall adopt new rules to incorporate new facts contained on the standard certificates.

Amend RSA 126:24-c as inserted by section 25 of the bill by replacing it with the following:

126:24-c Access to Information from Vital Records for Public Health Purposes. The department shall have a direct and tangible interest in vital records data including personal identifiers. The secretary of state shall provide continuous electronic access to the department of the entire contents of the data files on a 24-hour, 7-day per week basis. If a means of electronic access becomes possible that will allow access at a faster rate, the department may utilize such new means of access, provided that it assumes the full cost of implementing the new means of access. Such access shall be provided in standard database format that establishes a remote electronic link from the secretary of state's office to the department that would not restrict the ability of the department to transfer data. However, under no circumstance shall any information relative to any adoption or any restricted record as determined by a court of law be provided to the department.

Amend RSA 126:24-e as inserted by section 25 of the bill by inserting after paragraph VI the following new paragraph:

VII. The board shall have 2 part-time staff persons to conduct the duties associated with the work of the board. The board shall reimburse members for travel expenses associated with board activities.

Amend RSA 126:24-f as inserted by section 25 of the bill by inserting after paragraph II the following new paragraph:

III. Annually, on or after April 30 for birth data, and on or after August 31 for death data, the committee shall produce a report on the quality of the prior year's vital records data based on the final data year reports received from the National Center for Health Statistics for natality and mortality demographic files. The report shall include a statement on the quality and completeness of each element recorded on the statistical forms as they are maintained electronically. The report shall be submitted to the commissioner, or designee, the secretary of state, the registrar of vital records, the speaker of the house of representatives, and the president of the senate.

Amend the bill by inserting after section 27 the following and renumbering the original section 28 to read as 29:

28 Transfer.

I. All existing rules, regulations and procedures in effect, in operation, or adopted in or by the former department of health and human services, office of community and public health, bureau of vital records are declared in effect and shall continue in effect until rescinded, revised, or amended by the secretary of state.

II. All of the functions, powers, duties, and responsibilities of the department of health and human services, office of community and public health, bureau of vital records are transferred to the secretary of state. The transfer provided for in this section shall include all of the personnel, books, papers, records, equipment, unexpended appropriations, or other available funds in any account or subdivision of an account of the department of health and human services and authorized for use by the

office of community and public health, bureau of vital records, actions and other property or obligations of any kind of the department of health and human services, office of community and public health, bureau of vital records.

III. The transfer of the office of community and public health, bureau of vital records from the department of health and human services to the secretary of state shall not affect the terms or appointments of current members of the vital records improvement advisory committee established under RSA 126:32.

SENATOR GREEN: Thank you Mr. President. I move that SB 128 ought to pass with amendment. This bill is the bill that transfers the Bureau of Vital Records from the Department of Health and Human Services to the Secretary of State's Office. The committee amendment is a house-keeping amendment that was drafted by the Department of Health and Human Services and the Secretary of State. The fiscal impact is "minimal". Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 161**, relative to procedures in eminent domain proceedings. Finance Committee. Ought to pass with amendment, Vote 5-0. Senator D'Allesandro for the committee.

**Senate Finance**  
**March 31, 2003**  
**2003-1058s**  
**01/09**

#### **Amendment to SB 161**

Amend the bill by replacing all after the enacting clause with the following:

1 Preliminary Steps to Initiating Action. RSA 498-A:4 is repealed and reenacted to read as follows:

498-A:4 Preliminary Steps to Initiating Action.

I. DISCLOSURE. At the initial contact with a property owner, the condemnor shall provide to the condemnee a copy of "Public Projects and Your Property," as amended, which provides information regarding acquisition and relocation to the property owner. "Public Projects and Your Property" shall include a disclosure, conspicuously located, which states that the condemnor does not represent the rights of the condemnee and that the condemnee may not rely upon the condemnor or its employees for independent advice or unbiased counsel.

#### **II. APPRAISAL.**

(a) The condemnor shall have an impartial, qualified appraiser make at least one appraisal of all property proposed to be acquired. The appraiser shall make reasonable efforts to confer with the condemnees or their personal representatives.

(b) Every condemnee who is the subject of a residential property acquisition shall have a reasonable opportunity to have his or her property appraised by an independent, qualified appraiser, employed by the condemnee. The condemnor shall reimburse the cost of the residential appraisal up to \$1,000.

(c) Before making the offer provided for in paragraph III, the condemnor shall make reasonable efforts to negotiate with the condemnees



or their personal representatives for the purchase of the property, but failure to confer or negotiate shall not be a defense to condemnation of a property. Any sum of money or other consideration discussed by either the condemnor or the condemnee during any such negotiations shall not be admissible in evidence and shall not be referred to in any proceedings for the determination of just compensation.

(d) Within 10 days of receipt of a notice of offer provided for in paragraph III of this section a municipal condemnee shall, at the request of the condemnor, furnish the condemnor with the estimated amount of unpaid taxes, fees and interest for which notice has not been recorded at the registry of deeds for the county in which the property is located. Failure to timely provide such estimate shall not affect any right of a municipal condemnee under this chapter.

(e) When the condemnor is the department of transportation, the condemnor shall review any independent appraisals for accuracy before formulating a notice of offer.

(f) The condemnor shall provide a copy of the appraisal, and if requested, review notes on which the negotiations are based to the condemnee at the time of negotiation or at least 45 days prior to making the notice of offer, whichever comes first.

### III. NOTICE OF OFFER.

(a) The condemnor shall make its notice of offer within a reasonable time after it publicly announces its plans to take a property.

(b) No property shall be taken unless the condemnor shall serve upon the condemnee a written notice of offer to purchase, which shall set forth:

(1) The purpose for which the property will be taken.

(2) A description of the property to be taken sufficient for the identification thereof, including sources of title, if ascertainable.

(3) The amount of compensation offered and whether the offer is based on the appraisal required by RSA 498-A:4, II(a), or on some other basis.

(4) The date the property value was determined.

(5) That an action to condemn the property in the manner provided by this chapter will be commenced if the offer is not accepted within 30 days after service of the notice, or that the condemnee may reject the offer within 20 days and request a notice of offer based on the value of the property at the time the taking was announced or at the time of the notice of offer.

(c) When the taking of a portion of the property will have a substantial unfavorable impact on the condemnee's use of the property, the condemnee shall have the option of rejecting the notice of offer and electing to have the entire property condemned. The condemnee shall have this option regardless of the financial value of the portion to be taken.

(d) Any offer shall remain outstanding and may be accepted by the condemnee until such time as either the condemnor or the condemnee files a petition in the superior court to have the damages reassessed under RSA 498-A:27.

(e) The condemnor shall make public a complete list of such offers showing the name of each condemnee and the amount of the offer in each case, including the value of the property before and after the taking, if different, and the amount of damages.

### IV. SERVICE OF NOTICE.

(a) The giving of the notice of offer is a jurisdictional prerequisite to instituting condemnation proceedings. The notice may be served by

certified mail and service shall be complete on the date of mailing. If the condemnee is a minor, an incompetent person, unknown, or is one whose whereabouts are unknown, the condemnor shall serve such notice upon the legal guardian of the condemnee. If there is no such guardian, the condemnor shall petition the board and request that a guardian ad litem be appointed to represent such condemnee. If the condemnee is unknown or one whose whereabouts are unknown, such notice shall also be published once in a newspaper of general circulation in the county where the property is located.

(b) If the offer is accepted, the transfer of title shall be accomplished within 30 days after acceptance, including payment of the considerations set forth in the offer or as agreed upon between the parties, unless such time is extended by mutual written consent by the condemnor and condemnee. In the event the condemnee fails to convey the property within the specified time, the condemnor may commence condemnation proceedings.

(c) If the offer is not accepted within 30 days after the service of the notice, the condemnor shall commence condemnation proceedings within 90 days after the expiration of such 90-day period.

2 New Section; Abandonment of Property Not Condemned. Amend RSA 498-A by inserting after section 12 the following new section:

498-A:12-a Abandonment of Property Not Condemned. If a condemnor acquires property before condemning a fee, the property may not be disposed of for any reason without first offering to the condemnee, his or her heirs and assigns, the property including any improvements made on such property, at the fair market value. The condemnee, his or her heirs and assigns shall be served notice in the same manner as prescribed for the service of notices in RSA 498-A:4, and shall have 90 days after receipt of such notice to make the written acceptance thereof.

3 Effective Date. This act shall take effect July 1, 2003.

**2003-1058s**

#### AMENDED ANALYSIS

This bill clarifies certain eminent domain proceedings.

SENATOR D'ALLESANDRO: Thank you Mr. President. I move SB 161 ought to pass with amendment. Senate Bill 161 is the fourth of the bills recommended by the Eminent Domain study committee and contains the recommended policy and procedure changes. The right to own property is constitutionally protected, and held dear by our citizens and one of the foundations of our government. However, there are circumstances where a valid public purpose justifies the taking of private property by a governmental entity. It is reasonable from time to time to have the legislature review the procedures by which these takings occur to be sure that a proper and appropriate balance exists to protect the property owner's rights. The policies proposed in SB 161 seek to strike that correct balance. It includes a disclosure requirement by DOT so that property owners would be informed "that the condemnor does not represent the rights of the condemnee and that the condemnee may not rely upon the condemnor or its employees for independent advice or unbiased counsel." Senate Bill 161 allows residential property owners the opportunity to have an independent appraisal that may be reimbursed up to an amount of \$1,000. The bill as amended, also allows a more reasonable time frame by which the condemnee can respond. Current statute allows only 10 days, certainly not an adequate amount of time for the landowner to hire

an appraiser or consult with legal counsel. While the study committee recommended 90 days, the Finance amendment compromised this to 30 days. Last, the amendment provide that when property is taken but not through the condemnation process and the project is later abandoned, the property may not be disposed of without first being offered to the prior owner or heirs at the fair market value. Senate Bill 161 originally recommended the establishment of an Ombudsman in order to provide a neutral place for people involved in the eminent domain process to obtain information. While this would have been a valuable service to our citizens, due to the current fiscal situation of the state, this position was removed. The remainder of the bill has little or no fiscal impact. The parties who have worked throughout the study committee process on this legislation support these changes. The Senate Finance Committee asks your support for SB 161 as amended. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 90-FN**, increasing the cap for relocation assistance for businesses in eminent domain proceedings. Finance Committee. Ought to pass, Vote 5-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you Mr. President. I move SB 90 ought to pass. This bill increases the cap on relocation of assistance for businesses in the eminent domain proceedings from \$10,000 to \$100,000. This bill will only increase state highway fund expenditures and was also requested by the Department of Transportation. Please join the Finance Committee by voting this bill ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 21**, relative to health insurance riders. Insurance Committee. Ought to pass with amendment, Vote 4-1. Senator Prescott for the committee.

**Insurance**  
**March 26, 2003**  
**2003-0992s**  
**01/05**

#### **Amendment to SB 21**

Amend the bill by replacing section 1 with the following:

I. Medical Underwriting; Individual Policies. Amend RSA 420-G:5, II to read as follows:

II. Health carriers providing health coverage for individuals may perform medical underwriting, including the use of individual health statements or screenings or the use of prior individual claims history, to the extent necessary to establish or modify premium rates, only as provided in RSA 420-G:4. Such underwriting may be limited to the use of a standardized health statement for use in adjustments to rating pursuant to RSA 420-G:4. The commissioner may, by rule, require carriers to use a standardized health statement. ***Health carriers providing health coverage for individuals may issue policies containing riders or endorsements that exclude coverage for a specified condition that existed prior to the issuance of coverage and complications that arise from the specified condition if all of the following standards are met:***

*(a) The coverage exclusion shall be for a specific medical condition and complications arising from the condition.*

*(b) The coverage exclusion shall not apply to any other medical condition not related directly to the specific medical condition being excluded.*

*(c) The health carrier shall provide to the applicant before issuance of the policy a written notice explaining the coverage exclusion for the specified condition and complications arising from the condition.*

*(d) The health carrier's offer of coverage and policy shall clearly indicate in bold print as a separate section of the policy or on a separate form that the applicant is being offered coverage with a coverage exclusion and specifying the excluded medical condition and related complications that will be considered as arising from the excluded condition.*

*(e) The health carrier's offer of coverage and policy shall not include riders or endorsements that exclude coverage for more than 2 specified conditions.*

*(f) The health carrier shall notify the applicant that it will review the underwriting basis for the coverage exclusion upon request one time per year, and remove the coverage exclusion, no later than the next policy renewal date, if the health carrier determines that evidence of insurability is satisfactory.*

*(g) The health carrier shall notify the applicant in writing that the applicant may decline the offer of coverage with a coverage exclusion and obtain coverage through the New Hampshire health insurance high risk pool, under RSA 404-G.*

*(h) The coverage exclusion period shall be concurrent with any other applicable preexisting condition limitation or exclusion period.*

*(i) The health carrier shall provide to covered persons who may be subject to coverage exclusions a means by which coverage for specific services can be verified in advance.*

*(j) Riders or endorsements containing coverage exclusions shall not apply to services, benefits, or options required by state or federal law to be included in the coverage.*

Amend the bill by replacing section 3 with the following:

3 High Risk Pool Eligibility. Amend RSA 404-G:5-e, I(c) and (d) to read as follows:

*(c) The individual has a history of any medical or health condition that is on a list adopted by the association; [or]*

*(d) The individual is an "eligible individual" as defined in section 2741(b) of the Public Health Service Act[-]; or*

*(e) The individual has received an offer of coverage from a carrier of individual health insurance that contains a rider or endorsement excluding coverage for a specified condition pursuant to RSA 420-G:5, II.*

SENATOR PRESCOTT: Thank you Mr. President. I move that SB 21 ought to pass with amendment as recommended by the Senate Insurance Committee. The state of New Hampshire has made significant steps in the past couple of years, instituting new reforms in the insurance industry. These reforms have allowed increases to competition among insurance providers at lower costs to the consumers. This bill, SB 21, is another step in that direction. It will allow insurance carriers to provide insurance with riders or waivers for pre-existing conditions. Without this

bill, many residents in our state are forced to enter the state's high-risk pool because they have pre-existing conditions that aren't covered under current insurance regulations. Too often, this results in people being forced to choose between coverage under a high-cost state risk pool or foregoing insurance altogether. Passage of this bill will help alleviate this problem. Consumers now will be allowed to, of their own free will, to have private insurers offer lower cost insurance with exemptions for most pre-existing conditions. The committee believes this is a very good bill. Again, it is purely voluntary by the person purchasing the insurance to allow a rider or an exemption on their insurance, of a pre-existing condition so that they can purchase lower cost insurance without having to be forced into the high risk pool or out of the insurance market altogether if they can't afford the high risk pool. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 110**, relative to small group health insurance coverage. Insurance Committee. Ought to pass with amendment, Vote 4-1. Senator Prescott for the committee.

**Insurance**

**March 26, 2003**

**2003-0993s**

**01/05**

### **Amendment to SB 110**

Amend RSA 420-G:2, XVI(a) as inserted by section 4 of the bill by replacing it with the following:

XVI.(a) "Small employer" means a business or organization which employed on average, ~~one~~ 2 and up to ~~100~~ 50 employees, including owners and self-employed persons, on business days during the previous calendar year. *"Small employer" shall also include self-employed persons who had small employer coverage on June 30, 2003 and, since then, have continuously maintained small-employer coverage through the exercise of renewal or replacement rights under RSA 420-G:6, V or VI.* A small employer is subject to this chapter whether or not it becomes part of an association, multi-employer plan, trust, or any other entity cited in RSA 420-G:3 provided it meets this definition. *With prior notice to the commissioner, a health carrier may elect to treat all self-employed persons as small employers.*

Amend RSA 420-G:4, I(e)(7) as inserted by section 5 of the bill by replacing it with the following:

(7) Upon the renewal of a small employer policy, a carrier is prohibited from increasing the premium rate by more than 25 percent of the rate that was charged in the preceding year. Such rate increase limitation shall not include any premium rate increase that is based on a carrier's annual cost and utilization trends; changes in the rating factor for group size; or changes in the rating factor for attained age of covered persons. This subparagraph shall expire on September 1, 2005.

Amend the bill by replacing all after section 6 with the following:

7 Small Group Coverage Renewal and Replacement Rights Extended to Certain Self-employed Persons. RSA 420-G:6, V is repealed and re-enacted to read as follows:

V.(a) Health coverages subject to this chapter shall be renewable as follows:

(1) Individual policies shall be renewable to all individuals, regardless of age or eligibility for medicare.

(2) Small group policies shall be renewable to employees and eligible dependents at the option of the small employer and to self-employed persons who had small-employer coverage on June 30, 2003 and who have continuously maintained small-employer coverage through the exercise of renewal or replacement rights under RSA 420-G:6, V or VI.

(3) Large group policies shall be renewable to employees and eligible dependents at the option of the large employer.

(b) The right of renewal under this section shall not exist when the following circumstances apply:

(1) Nonpayment of required premiums.

(2) Fraud or intentional misrepresentation on the part of an individual or an individual's representative, or on the part of an employer, employee, dependent, or an employee's representative.

(3) Failure to meet the minimum employee participation number or percentage requirement of the health coverage.

(4) The small employer is no longer actively engaged in the business that it was engaged in on the effective date of the health coverage.

(5) The employer medically underwrites or otherwise violates a provision of this chapter.

(6) The health carrier is ceasing to offer health coverage in such market, in accordance with paragraph VII.

8 Qualified Association Trust. RSA 420-G:10 is repealed and reenacted to read as follows:

420-G:10 Qualified Association Trust.

I. A qualified association trust or other entity, as defined in RSA 420-G:2, XV, shall:

(a) Employ the rating methodology outlined in RSA 420-G:4 for all small employer members with 50 or fewer employees based upon the association's group experience.

(b) Offer all eligible members, as defined under the applicable trust or other documents, coverage and rates on a guaranteed issue and renewable basis.

(c) Comply with the regulations concerning medical underwriting in RSA 420-G:5.

(d) Comply with the preexisting conditions provision of RSA 420-G:7.

II. Nothing in this chapter shall be interpreted to limit the size of employers who may participate in coverage with a qualified association trust.

9 Repeal. The following are repealed:

I. RSA 420-G:8, I(b), relative to medical underwriting.

II. RSA 420-G:8, I-a, relative to open enrollment periods.

10 Effective Date. This act shall take effect July 1, 2003.

SENATOR PRESCOTT: Thank you Mr. President. I would like to take a recess at this time.

**Recess.**

**Out of recess.**

SENATOR PRESCOTT: Thank you Mr. President. I rise in favor of SB 110. One of the major changes contemplated in this Senate Bill was changed in the definition from companies with 1-100 employees to companies with 2-50. This was the beginning of the process of coming up with this bill. While 2-50 is the law in most states, the change of potential

of disrupting the insurance coverage for many sole proprietors in New Hampshire didn't want to see that happened. From the very start, we said that we wanted to take care of groups of one. I am pleased that after much research and discussions with all of the interested parties, that we are able to present a floor amendment. It would allow sole proprietors to purchase small group insurance and at the same time, make New Hampshire's small group market an attractive market for those from 2-50. A very attractive market for insurance companies to return to New Hampshire and offer small businesses variable products, drive down costs is the ultimate goal. This floor amendment will change the definition of the small group employer from 1-50 and ensuring that the sole proprietors can purchase group insurance on a guaranteed issue basis and be guaranteed. It would also strengthen the bill and provide sole proprietors in New Hampshire with a wide range of insurance choices. We need that to come back to New Hampshire, both in the group market and in the individual market that we have seen in the past. We would like to see the same thing happen for the passage of this bill that has happened in the individual market. Thank you Mr. President. I urge the full Senate to adopt this amendment.

SENATOR BARNES: Thank you Mr. President. Senator Prescott, if we want this super worked out new amendment that you are talking about, do we have to vote down what we have here?

SENATOR PRESCOTT: Yes.

SENATOR BARNES: So if we want this great thing to go on, we have to say no on the vote on the floor?

SENATOR PRESCOTT: As I am told.

SENATOR BARNES: Thank you Senator.

SENATOR PETERSON: Thank you Mr. President. Senator Prescott, the committee amendment includes a section seven relating to small group coverage renewal and replacement rights extended to certain self-employed persons. I believe that is further amended by the other amendment, so it would appear to me, that in order to accomplish your purpose, we would want to approve this amendment first, then further amend with the floor amendment that is coming. Could you advise on that please?

**Recess.**

**Out of recess.**

SENATOR PRESCOTT: Thank you Mr. President. The Clerk and Senate Counsel have advised me that we need to pass the Senate committee amendment first to allow us to amend that amendment from the committee on the floor. Thank you very much. So we vote yes on the committee amendment.

**Amendment adopted.**

Senator Prescott offered a floor amendment.

Sen. Prescott, Dist. 23

**April 3, 2003**

**2003-1134s**

**01/09**

### **Floor Amendment to SB 110**

Amend RSA 420-G:2, XVI(a) as inserted by section 4 of the bill by replacing it with the following:

XVI.(a) "Small employer" means a business or organization which employed on average, one and up to ~~[100]~~ 50 employees, including owners and self-employed persons, on business days during the previous calendar year. A small employer is subject to this chapter whether or not it becomes part of an association, multi-employer plan, trust, or any other entity cited in RSA 420-G:3 provided it meets this definition.

Amend RSA 420-G:4, I(e)(3) as inserted by section 5 of the bill by replacing it with the following:

(3) Carriers may use group size as a rating factor. However, the highest factor based on group size shall not exceed the lowest factor based on group size by more than 20 percent; provided that for groups of one, an additional 10 percent rating factor shall be allowed from the highest factor.

Amend RSA 420-G:4, I(e)(7) as inserted by section 5 of the bill by replacing it with the following:

(7) Upon the renewal of a small employer policy, a carrier is prohibited from increasing the premium rate by more than 25 percent of the rate that was charged in the preceding year. Such rate increase limitation shall not include any premium rate increase that is based on a carrier's annual cost and utilization trends or changes in the rating factor for attained age of covered persons. This subparagraph shall expire on January 1, 2005.

Amend the bill by deleting section 7 and renumbering the original sections 8-10 to read as 7-9, respectively.

Amend section 8 of the bill by replacing it with the following:

8 Repeal. RSA 420-G:8, I(b), relative to medical underwriting, is repealed.

2003-1134s

#### AMENDED ANALYSIS

This bill revises the laws relative to small group health insurance. The bill changes the definition of small group employer to employers with 1-50 employees. Current law defines small group employers to have 1-100 employees.

SENATOR PRESCOTT: Thank you Mr. President. As I mentioned early in my early floor remarks, this amendment will take care of the sole proprietors in the state of New Hampshire, allowing them to have access to the insurance that they have been used to in the past, to consider their position in the marketplace. Thank you very much Mr. President.

SENATOR COHEN: Thank you very much Mr. President. We have all gotten quite a bit of mail on this issue. Most of it frankly, opposing it. I am opposing the passage of this bill even with this amendment, which makes it slightly less bad. The basic question is, is health insurance too expensive? Of course it is. It is a problem for all of us. But is this the right solution? I certainly don't think so. I sat through the committee hearing. This is discrimination. This is cherry picking, based on size, geography, industry, health status and age. Senate Bill 110 has been argued will cause more insurance companies to come into New Hampshire, into the market. That may be true, but the new players won't have a very big market share, they will have a very small, a very attractive market share, so it won't necessarily achieve the result of more competition. The rates for some groups, the healthier groups, the less risky groups, will be lower, but for others, the rates will be higher. A lot of



groups will see significant increases. There are many aspects of SB 110 that are rather onerous. The first one, the biggest, most onerous provision, is that currently an insurer cannot require a small group to submit health status information from employees to calculate the premium. They don't want to do this, you heard this in your letters. Under SB 110, prior to quoting a premium cost to the group, employees may be required to submit to the insurer, a health status questionnaire. This is invasive and it is objectionable. I have spoken with a number of employers who really don't want to be put into this position. The questionnaire will ask about health conditions that their employees and their family members have had regarding medical services for many different illnesses. Based on the employee's responses to this health status questionnaire, the employers premium could increase over an average rate of up to 25 percent. As we stand now, New Hampshire's small employers probably have no knowledge about the incidents of persons in their work force with health risks. The state has committed to community rating since 1994 and health conditions were not taken into account. We should not force this kind of invasive procedure on employers who really don't want to be put into this position. The second most onerous provision of SB 110 is adding geographic rating factors to small group premium calculations. Small employers located in the more costly regions could experience an increase of up to 15 percent based on this rating factor. Which employers could experience higher premiums as a result of this bill? Many. Businesses located in the seacoast and in the North Country regions where medical services are more expensive. Businesses with employees over 60 years old could experience higher premiums. Business with employees or their dependents with health conditions, business types, such as health care services, auto repair, personal and home services, transportation, lodging, food service, social service, construction, et ceteras. These could all have their premiums increased over the next three years by 65 to 72 percent. Is this something that we want to approve? I certainly don't think so. Senate Bill 110 does not resolve the problem of high insurance premiums in the small group market. It just rearranges the deck chairs. From a report that was presented to the Insurance Committee from the New Hampshire Insurance Department, "The effects of introducing a rating factor for geographic location 15 percent will allow insurers to reflect geographic differences in costs, in the prices that they quote in the different regions of the state". Again, this is from the Insurance Department. "It is likely to cause rates to go up in the North Country and in the seacoast." I don't think this is a good thing to do. It will tend to lower rates for low risk industries and raise rates for high-risk industries. Do we really want to hurt an already weakened economy, which is what this would do? Further the report states "that it will tend to lower premiums for healthier groups and raise premiums for groups whose members are less healthy." I would hope that we wouldn't want to do that. "Some groups are likely to experience increases at a rate that is larger than 25 percent. The affect of this will decrease the cost for some, increase the cost for many." I don't think this is good public policy and I would strongly urge and ask my colleagues to defeat SB 110. Thank you Mr. President.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. If I may speak for a minute to Senator Cohen. His arguments are almost identical of the letter written out by the Anthem Blue Cross/Blue Shield dated March 5, to all of the New Hampshire Employers. I would like to say that all of us received much mail on this. I don't know

if there is any connection between the paper mill opening this week and the amount of letters that we received, but I think that there is some connection. This is one of the most important bills that will come before us this year. I can pretty much guarantee Senator Cohen that if we don't do anything, they are going to go up at least 75 percent as you said, because we look back...I got a call last night from somebody who is re-negotiating right now and their increase is 29 percent. So if we don't do anything it is going to go up. We have to do something. I happen to think that this is the tool, this is the vehicle that we should try to get competition back into the state of New Hampshire. I had some notes and I was going to tell you what I thought was going to happen with a monopoly, but guess what, it happened? I don't know how many people read the paper yesterday, but Anthem Blue Cross Blue Shield, went to the Lakes Region General Hospital and the Franklin Regional Hospital, and said no more. We are not going to deal with you anymore. Do you know what that does? Ten thousand people in Franklin and the Lakes Region have no doctor and no hospital. Now isn't this what a monopoly does? Of course it does. We have a monopoly. We have one large company and two very small companies. We need to have somebody to come in and say to this big company, we are going to give you some competition. I am going to ask you people in the North Country, what happens if Blue Cross Blue Shield goes to Berlin and says that they don't want anymore, the people in Errol and Berlin are going to come where, Conway to find a doctor? What if it happens in Colebrook? They are going to go to Lancaster to find a doctor? If they did it in the Lakes Region, are they going to just do it on one hospital or two hospitals? I don't think so. I don't think so. They are showing their strength. I think that it is rather interesting in the same paper that they are closing down the Lakes Region Hospital, that in here, "Anthem moves to 146 on the Fortune 500". Is this right? I don't think so. Little Franklin Hospital is up there and they have added up, I don't know how many millions of dollars to put in facilities and trying their best to take this hospital...that was almost broke, and they lifted it up and now the largest insurer in the state of New Hampshire says that they don't have to deal with them anymore. It could put them out of business. Look at 110. There were four companies that testified in front of our committee, saying that if 110 passes, they will come back into the state of New Hampshire and they will write insurance. Every one of these amendments, you have only seen one out of about 17. But they agreed to every one of them. There has been a lot of movement in here to get these four companies to come in. Fortis testified in front of our committee, that as a result of what we did last year, you remember, we passed legislation for the individual accounts. Fortis is going to reduce their premium 20 percent on individual accounts. I think that we helped do that. I am hoping that the same thing will happen if we pass 110. I think that you really have to look at it, ladies and gentlemen, because if we do nothing, the sky is the limit and we are going to have one large company that is going to tell all of the hospitals and all of the doctors in New Hampshire what they can do and what they can't do. I certainly will hope for your support and look at this bill and let's give it a chance. Thank you very much.

SENATOR BARNES: Senator Cohen, you have a good memory, I have known that over the years. Did you vote for SB 711 a few years ago?

SENATOR COHEN: I was here.

SENATOR BARNES: Did you vote for that bill?

SENATOR COHEN: My memory may not be that good, I imagine that I did.

SENATOR BARNES: Thank you. My second question is a would you believe? Would you believe that you have an opportunity to make amends for the mistake that you made when you voted for that bill?

SENATOR COHEN: I don't think that I made a mistake in voting for that bill. I would like to say in answer to your question, we talk about competition, when you think about competition, what does that mean? It means the same playing field. You are competing for the same market. Look there is a problem, there is no doubt about that, but this cure, I think, may be worse than the disease. We need to look at, is this real competition by taking little parts of it, by taking all of the best parts of it, you are competing for the same field. This is not real competition.

SENATOR GATSAS: Senator Flanders, we passed SB 21, relative to health insurance riders just a few minutes ago. Do those health insurance riders pertain to the groups of one in the bill that we are talking about now?

SENATOR FLANDERS: They do not. It has to be an individual account.

SENATOR GATSAS: Thank you.

SENATOR FLANDERS: Thank you.

SENATOR FOSTER: Senator Flanders, I understand that the floor amendment that we are on right now, Senator Prescott's floor amendment. Section 7, if I am reading it correctly, says that "a small employer policy, a carrier is prohibited from increasing the premium rate by more than 25 percent of the rate that was charged in the preceding year. Such rate increase limitation shall not include any premium rate increase that is based on a carrier's annual cost and utilization trends or changes in the rating factor for attained age of covered persons. This subparagraph shall expire on January 1, 2005." What happens after January 1, 2005, is the sky the limit for them to increase the premium?

SENATOR FLANDERS: I don't know the answer to that, I am going to yield to Senator Prescott.

SENATOR PRESCOTT: Thank you, I am glad that you brought that up because the sky's the limit right now. The transition from 711 was the same type of transition period that we are putting on SB 110, giving it ability for the new way of conducting business in the small group market. They have a time, a period, a transition period to move into a free market status. That is what was done when we transferred from the old way to the new way when we did it to SB 711, not myself, but we are using that same format that was done then to try and stabilize the market until more groups come in, more insurance providers come in to offer free market situations where the rates will be stabilized.

SENATOR FOSTER: But if I am in a small group, an employee...say I have ten employees, after January 1, 2005 if one of my employees gets really ill with a chronic disease or perhaps has twins or something and they are put in the hospital for long periods of time, that small group can just be raised in an unlimited amount? Is that what will happen under this?

SENATOR PRESCOTT: No, the rating factors are there as a limit as well. If you read the rest of the bill, the rating factors are there as a limit on the amount that can be raised.

SENATOR FOSTER: So the 25 percent then, refers to what?

SENATOR PRESCOTT: Overall rating factor increases because I can't give you the exact, because it is not my area of expertise other than the overall, it is capped at 25 percent because of the change from one way of doing business to another way of doing business. When you say that a group has an individual change like someone became pregnant or had twins, and that is in an individual part of the rating ability, there are different rating categories in the bill, so that would strictly be referring to one rating ability, and that one rating ability is capped. But during the transition when you are looking at all of the rating abilities, we said, for the transition, you can't compound all of these things all at once and disrupt the insurance system.

SENATOR FOSTER: But after January 1, 2005 that is when it takes off?

SENATOR PRESCOTT: If everything happens. If they move their business, if they start a business with a demolition company instead of a boutique, if they all of a sudden, everybody turns 95 years old, if all of those things occur, then there is that ability to rate, but they are all capped and we believe that the transition period maintains that it will not increase for the transition period greater than 25 percent, because we believe that after the market has arranged itself, it will naturally limit the amount of change.

SENATOR FOSTER: Thank you.

SENATOR PRESCOTT: You bet.

SENATOR BOYCE: Senator Flanders, would it surprise you at all to know that I went back, not to long ago, and read in the *Senate Journal* the testimony on SB 711, which most of us believe caused this or many of us believe caused this situation, and I found that the majority of the insurance companies that testified, testified against that bill and said that it would run them out of the state if it was passed? And that the prime insurance company who testified in favor of the bill happened to be the largest insurer today?

SENATOR FLANDERS: My understanding is, I was not here Senator Boyce, but my understanding is...and my research was that the company that...there were approximately 20 odd companies doing business in New Hampshire and they came to that hearing, and they said that, "if you pass this bill, we are going to leave the state." And guess what? They passed the bill and they left the state. Now we are trying to get them all to come back in and those same companies are telling us today, if you pass SB 110 we will come back.

SENATOR BOYCE: Thank you.

SENATOR BARNES: Thank you Mr. President. Senator Boyce, would you believe that what you read in the *Senate Journal* is absolutely correct on what happened?

SENATOR BOYCE: I am glad to hear that the *Senate Journal* was correct.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

SENATOR BELOW: Thank you Mr. President. Senator Flanders was right about one thing, which is this is one of the more important bills that we are going to act on this year. This bill does create competition,

and I do believe in the power of the marketplace, free markets are a good thing. But let's look at the kind of competition that this bill creates. Does it create competition in the management of medical claims? No. Nothing in it does that. Does it create competition in risk management of people and their health conditions? No. Does it create competition in the efficiency of the delivery of health care? No. Does it create competition for improved medical outcomes or for reduced costs or improved quality of health care? No. What it creates competition for is in risk selection. In risk analysis. In underwriting. In picking who's the winners and who's the losers. It creates competition for the companies who can figure out who are the low risk employers that they can offer a lower rate for and maybe they won't even offer a rate or very few rates for those that are higher risks. We are going to have higher medical costs. Somebody is going to provide those services, but they are going to have to be...for every winner there is going to be a loser because it does nothing to do anything to control the underlying costs. In fact, for every winner, there is probably going to be more than one loser, because what this bill does is it means that Anthem Blue Cross, Cigna, the other several insurers in the private market are going to have to hire a bunch of bean counters. They are going to have to hire a bunch of salesmen and a bunch of lawyers and they are going to add to their bureaucracy and overhead to compete against the companies that are going to come in with this bureaucratic overhead that specializes in risk analysis, not trying to reduce the cost of medical care or medical outcomes. We are going...for every group policy that sees a reduction, we are going to see at least one group that sees an increase. The increase can be not just 25 percent a year, but also that carriers annual cost, utilization trends, and rating factor for obtained age as the group gets older. So what does that mean? It means that some of our small employers are going to see not 25 percent, not 50 percent, but even greater increases all at once. It means that some of our small employers are going to end up dropping health insurance. So yes, maybe we are going to push some of the high risk, high cost groups out of the healthcare system, and thereby lower the cost of insurance, but we are not going to lower the cost of health insurance, I mean healthcare. The Franklin Hospital is going to be out there having to provide healthcare to people who are uninsured. Their charity care is going to go up. The demand for Medicaid is going to go up, and the state which monopolizes that conveniently, says that we are only going to pay you 60 or 70 percent of your cost of doing service, and you have to make it up somewhere. So Franklin Hospital is saying that they have to make it up with Anthem Blue Cross, and Anthem Blue Cross is saying, "you are trying to charge us more than it costs to provide the service". And nobody wants to admit it, but it is true. That is why they are in an impasse, because the state is not paying its share, Medicaid from the federal government is not paying its share, charity is not paying its share. The uninsured can't afford to make up the difference. So yes, we have a problem, but this is not a solution. This is a giant step backwards. What does it mean for employers? They now have a vested interest in their workforce, in the healthcare condition of who they hired, the age of who they hire. They are not supposed to discriminate on age, but if they know that if they hire someone who is 50 verses somebody who is 25 and that is going to affect their health insurance costs, you can't tell me that is not going to be a factor in the back of their mind. They are going to have an interest in whether the spouse has a medical history that might cause utilization to go up. They have an interest if the child

of an employee gets cancer. If they let the person go, just because they happened to be laying someone off, let's let go the family that has cancer because it is going to lower the insurance for that employer. Does that make sense? Is that the way that we are going to achieve more access and more affordability of healthcare? No. It is not the answer. This bill is a giant step in the wrong direction, yet we can bring in some companies that can compete in underwriting and we can pay more money to pay for underwriting and competition in that area, but it is not going to do anything to reduce or manage healthcare costs or improve medical outcomes. I urge you to think twice. We will live to regret it if this bill becomes law because you are going to see small employers really screaming, those that are the losers, really screaming about where their rates are going. Thank you.

SENATOR CLEGG: Thank you Mr. President. Is SB 110 socialized medicine? Absolutely not. I wouldn't support anything that was. Imagine the concept that said if a smoker wanted to buy insurance, he had to pay a little bit more money because he contributes to his health problems, wow what a concept. What is wrong with that? Let's take a look at who is supporting SB 110. New Hampshire Business Council, the National Federation of Independent Businesses, New Hampshire Association of Insurance and Financial Advisors, High Tech Council, Cigna, Fortis Health, United Health Care. Who is not supporting it? Anthem Blue Cross, and why? Because if Anthem Blue Cross loses and we pass this bill, which will cause competition, you won't see anymore headlines that say "Anthem's profits increase 44 percent". Not bad. Forty-four percent. So obviously the current system isn't helping us. Group insurance at the business that my wife has went up again 30 percent and Anthem's profits went up 44 percent. We are hearing from at least three or four companies who are saying let us come in and open the market back up for competition, change what you did in 711 when you chased us out, and we will lower your rates. My rates have never been higher, and I have had group insurance since 1975. If we don't start this, then the drive for higher and higher insurance rates are going to go, and they are not going to stop. My colleague is correct that half the problem is the provider payments. Every time that we cut the provider payments, they tack it on to us. We can do something about that, too. But if we don't bring in competition, you are going to see 30 percent rate increases every single year, because you have no place else to go. If you want to make things change, then you have to be part of change and you have to vote for 110 so that we can move towards competition again in the state of New Hampshire. Thank you.

SENATOR FLANDERS: Thank you Mr. President. I did not say this before, I presumed that everybody knows it, but I do want to bring out that all of the letters that you got, most of them are the result of the letter that was mailed March 5 to all of the policyholders of Anthem. My selectmen in Antrim gave this to me and said what is this? I called some of the people that I got letters and I asked them where they got their information on all of the terrible things that are going to happen if we pass 110? They told me it was from the letter that they got from Anthem. All I heard Senator Below say today, and all I heard Senator Cohen say today is in this letter. If I may reply for a minute. You know risk management and medical management is not something that we legislate, Senator, it is something that the companies do. All companies have a risk management and a medical management program. You said that if these companies come back in for competition, they are going to have to hire attorneys and so forth, these companies have home offices now. They are

in business now. They are big companies. They don't have to reinvent themselves to come back to New Hampshire to write business. So there is an awful lot of misunderstanding on this and I think that the misunderstanding comes from this letter that went out. Now if you were in a position where you can tell the hospital that you are not going to do any business with them anymore, and your profits were 40 percent, would you want any competition? I don't think so. Thank you.

SENATOR PRESCOTT: Thank you Mr. President. It has been said that only a small amount of the market would end up coming back to New Hampshire and before it was only 5 percent. Does anyone remember a small insurance company that was in New Hampshire earlier in the 1990's or the late 80's and it was Time Life. I thought, boy we can buy a book. You know you have Time Life Books. Well Time Life Insurance was my provider because they came to me and said, "we can offer you a higher deductible and lower your premium costs." I looked at the higher deductible and I saw that I would like to offer a \$200 deductible to my employees, but they will offer me a \$1,000. I said, I can underwrite this myself. I can give \$800 to each one of my employees and I can save more than giving \$800 to each one of my employees, so it was a no-brainer, because it was competition in the marketplace, I was able to lower my insurance costs as a small businessman. Time Life left real quickly after SB 711 passed. The thing is that in 2001, we passed individual health insurance reform, competition came and costs were lowered. I believe that it is going to happen again if we pass this bill, in the small group market. Thank you Mr. President.

SENATOR GATSAS: Thank you Mr. President. Two years ago I sponsored a piece of legislation that allowed insurance companies that had left the state previous to come in sooner than the five year time allotted. We passed that in the Senate. It was a vehicle that we said, would allow companies to come back in for competition. In my previous life, before I had the honor of coming up here and serving in the Senate, we had a company that had probably somewhere around 600 small employers. Those small employers became our employees for a reason. The biggest reason, health insurance. We gave a product that allowed employees to go to any doctor, any hospital in the country. The rates were reasonable and it was \$100 deductible plan. It allowed them to participate in what we use to remember as the Blue Cross/Blue Shield J plan. That was the Cadillac of plans. This again, is an opportunity. I certainly hear what Senator Below is saying and we are all trying to make attempts to allow competition to come to the state of New Hampshire. Sometimes some of those decisions are difficult. I will be the first one to say that if we pass legislation and we don't see competition coming, then we have to take even more stringent, tougher policies to help the small employer reduce health costs. Most small employers have to worry about running a business. They can't tell you the first thing about where to shop for health insurance, how to shop for health insurance and what are the options? I think that it is important that we allow those people an opportunity to possibly see new companies come into the state. If this legislation does that, then so be it. In a short time, we should see rates coming down. If they don't, then I look at every colleague in here and I say, we need to do something tougher because that has to happen, because New Hampshire is going to lose the backbone of its state and that is the small business owner. Not only is he going to be hurting but the families in the state of New Hampshire are going to be hurting, because

they will not be able to find health insurance that is affordable. With that, I urge my colleagues to take a look at this, vote the amendment in, and give the small employers an opportunity to hopefully, see competition. Thank you.

SENATOR LARSEN: Thank you Mr. President. Like many of you, I received stacks of mail on this. Who were the majority of these pieces of mail coming from, but in fact, New Hampshire's small employers. Employers who are concerned that the affect of SB 110 will in fact increase their rates. The concern is that SB 110 will in fact increase competition, but the worry is that it will only increase competition for those healthy members of our society. The new insurers will come to the state and compete for the healthiest groups and perhaps they will see lower rates. The concern isn't for that group, they're not the ones having trouble covering their employees, they are not the ones having trouble finding insurance coverage. The concern is the less healthy members of our community, and those who are providing through great difficulty through their small businesses, offering employer-based health insurance. The concern is those small employers are continuing to see rate increases. Yes there is protection until 2005, what happens after that? This handful of mail, which many of you received, letters from a nonprofit group home in Manchester, concerned for their 20 employees, and their ability to continue to provide benefits. From small business creating software for the Department of Defense, they write, "this business has been in operation since 1974. Even without SB 110 we have seen huge increases in healthcare premiums. In a very real sense, SB 110 abrogates the idea of insurance as a contract, which admits the possibility of aging and sickness without imposing penalties as these things occur. This is the essence of what health insurance is about. They concluded saying, "our company would rather that the current community rating law be maintained. This way of rating healthcare insurance spreads the costs across the state and doesn't discriminate for the type of industry, healthcare risk or location." Finally, I have a letter from Franklin Pierce Law Center concerned too, that their coverage forces tuition rates up as their healthcare premiums go up, they have to compete to keep qualified staff in the law school, and they have to continue to offer affordable healthcare benefits. They support community rating for a way to distribute the costs. Yes we need competition. Yes we need to increase availability, affordability of healthcare. This is not the way to do it. In fact, this moves us backwards. I am afraid that the state will suffer and we will see rate increases and more and more small employers unable to continue to offer employee based health insurance.

SENATOR COHEN: Thank you for allowing me to speak a second time, Mr. President. Senator Clegg mentioned about smokers. Shouldn't smokers pay more because they bring so many health risks on themselves. Well I don't think that you would have any disagreement on that. I certainly would not disagree with that. The problem comes with things that people don't bring on themselves, like their children's diseases, or family members getting diseases or aging. Hopefully we are all going to do that. But these are not things that people bring on themselves, it is not a choice. We have a problem here. There is no doubt about it. I think that we all agree that insurance costs too much. We are all paying way too much for insurance. We need to do something, but should it be just anything? Doesn't the solution need to be appropriate to the problem? This, I would argue, is not appropriate to the problem. This does not cause



real competition. It is in fact, cherry picking. It allows the new companies, which may come in, to choose the healthier people, to take the less risky areas. This is a very important bill and I am very, very concerned that its passage will cause great harm to those who are least able to bear it. I would encourage my colleagues to vote against this bill. Thank you.

SENATOR PRESCOTT: Senator Cohen, as you recall in the committee that it was mentioned that it was taking away the accountability act or eliminating existing mandates for having to provide insurance to all groups. You keep mentioning cherry picking. Do you remember that?

SENATOR COHEN: Yes.

SENATOR PRESCOTT: Can you explain how you can consider it still cherry picking?

SENATOR COHEN: Because the cost will go up for certain groups. I think that it is fairly self-evident here, that certain groups being able to have different rates for different higher risk groups.

SENATOR PRESCOTT: I believe that you are referring to that everyone is going to get insurance. There is no cherry picking. They can't decide not to give insurance.

SENATOR COHEN: No, but those who are least able to bear a greater premium, will pay more. I don't think that is a good idea.

SENATOR PRESCOTT: Then say that.

SENATOR BELOW: I just want to clarify something. There seemed to be a suggestion that I was just mimicking the comments of one employer. I came to these conclusions just looking at the nature of what the bill did on my own, some time ago, as this idea was floating around. I might add that some of my comments are echoed in the New Hampshire Insurance Department's March 24, 2003 analysis of the bill. I will just cite a few points that they made. "Rates for some groups will be lower than they would be under the current market rules, on the other hand, rates for some groups will be higher than they would be under current market rules. These groups will then be more likely to reduce their level of coverage, for example, through higher deductibles, copayment or coinsurance requirements or to drop coverage due to the variable impact of health status on a groups risk profile, some groups may experience year-to-year rate volatility independent of other trends. Insurers may place a decreased emphasis on competing on the basis of efficiency and risk management and an increased emphasis on competing on the basis of risk selection. The immediate affect of these changes will be to redistribute costs between various insured groups without directly affecting medical claims costs." It goes on "Lower age groups tend to see a decrease. Premiums will tend to go up for those who are predominately older members. Rates will tend to be lower for healthy groups and will tend to go up for those that are less healthy, thus, putting the employer directly into the middle of an interest on not only his employees, but all of their family members and their health status and trends." That is not a place that I think that we want to go.

**Question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Cohen.**

**The following Senators voted Yes: Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Morse, Prescott.**

**The following Senators voted No: Gallus, Below, Foster, Larsen, Sapareto, D'Allesandro, Estabrook, Cohen.**

**Yeas: 15 - Nays: 8**

**Adopted.**

**Ordered to third reading.**

**SB 174**, relative to scheduled permanent impairment awards under workers' compensation. Insurance Committee. Ought to pass with amendment, Vote 5-0. Senator Flanders for the committee.

**Insurance**

**March 26, 2003**

**2003-0994s**

**01/05**

### **Amendment to SB 174**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to scheduled permanent impairment awards and remedial care under workers' compensation.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 Medical, Hospital, and Remedial Care. Amend RSA 281-A:23, II to read as follows:

II. The employer, or the employer's insurance carrier, shall pay the cost of artificial limbs, eyes, teeth, orthopedic appliances, and physical and surgical aids made necessary by such injury; shall pay the cost of replacement or repair when such is made necessary by wear and tear or by physical change in the person; and shall pay compensation for disability resulting from the replacement or repair, based on the employee's average wages at the time of the original injury. ~~[Notwithstanding RSA 281-A:48, I, a party may petition the commissioner for payment of such compensation at any time, if the disability results solely from the replacement or repair.]~~ If an employee by [accident] **accidental injury** arising out of and in the [cause] **course** of the employment has **additionally** suffered the loss of glasses, false teeth, an artificial member, or hearing aid, the employer shall pay the employee an amount equal to the value of the property so lost.

**2003-0994s**

### **AMENDED ANALYSIS**

This bill clarifies the wage to be used when calculating permanent impairment awards under workers' compensation.

This bill also clarifies certain remedial care issues.

**SENATOR FLANDERS:** Thank you Mr. President and members of the Senate. We will make this one much shorter, I am sure. This is a case where we are trying to correct a court decision that was made, which called for Ranger decision. Previous to this decision, when workers compensation was permanent and payments were made, it was based upon the injury that was earned at the time of the injury. If a person broke his arm and was making \$100 a week and a year later you determined that the permanency was tested on the arm, they were paid based on

that weekly basis at the time of injury. Ranger said that is not so, they could receive their payment on a wage after the date of injury. So after that, the insurance industry went 'okay' if he is not working and gets nothing...and the attorney says, "oh if he gets a promotion and he gets twice as much as whatever his new wage is". This has been fought out for about 20 years. We decided that we ought to put an end to this and say no question about it, when a persons permanent impairment is determined, the award will be based upon the injury, at the wage at the time of injury and that is what this bill does, and I ask for your support. Thank you much.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 201**, establishing a committee to study insurance practices relative to homeowner's insurance. Insurance Committee. Ought to pass, Vote 5-0. Senator Cohen for the committee.

SENATOR COHEN: Thank you Mr. President. I move that SB 201 ought to pass as recommended by the Senate Insurance Committee. This bill establishes a committee to look into the practices surrounding the homeowners insurance market. The committee took testimony from several constituents who feel they have been discriminated against after they made claims against their homeowners insurance. Many of us have heard stories of people who have paid for homeowners insurance for years without making a claim, but then have been turned down for renewal after circumstances called for them to make one or two claims within a short time span. Obviously, none of us think this is appropriate. The study committee will look into these situations to determine their validity and an appropriate response measure. The committee supports this bill and I ask the Senate to do likewise. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 209**, relative to permissible campaign contributions by business organizations and labor unions. Internal Affairs Committee. Rerefer to committee, Vote 3-2. Senator Boyce for the committee.

### **MOTION TO TABLE**

Senator Boyce moved to have **SB 209** laid on the table.

### **PARLIAMENTARY INQUIRY**

SENATOR BELOW: Parliamentary inquiry, Mr. President?

SENATOR EATON (In the Chair): Parliamentary inquiry?

SENATOR BELOW: If we lay this bill on the table and it stays on the table past next Thursday, will that in fact mean that we are...without a suspension of the rules, unable to act on the bill either this session or next session?

SENATOR EATON (In the chair): Or a two-third vote to come off.

SENATOR BELOW: Which is a two-third suspension of the rules?

SENATOR EATON (In the Chair): Correct.

SENATOR BELOW: Further inquiry?

SENATOR EATON (In the Chair): Further inquiry.

SENATOR BELOW: If I believe that we should not be killing this bill through this means, would I now vote no on the tabling motion?

SENATOR EATON (In the Chair): If you are for the tabling motion, you will vote yes. If you are not for the table, you will vote no.

SENATOR BELOW: Thank you.

**Question is on the motion to table.**

**A roll call was requested by Senator Below.**

**Seconded by Senator Estabrook.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**The following Senators voted No: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 17 - Nays: 6**

**Motion is adopted.**

### **LAI D ON THE TABLE**

**SB 209**, relative to permissible campaign contributions by business organizations and labor unions.

**HB 99**, relative to absentee ballot requests. Internal Affairs Committee. Ought to pass, Vote 5-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. I am kind of happy to get out of the insurance area and into a voting mode. This is an interesting piece of legislation that came before us. Presently, for a person to receive an absentee ballot, they fill out a form and they mail it to the town or city clerk, whichever. This bill gives permission for that person to fax their original letter to the town or city clerk asking for an absentee ballot. It doesn't do anything, there is no verification of signatures at this time. The verification of signatures is at the time the moderator opens the envelope and compares the outside of the envelope to the inside of the envelope to compare signatures and cast the ballot. We feel that this is an easier way for some people to acquire an absentee ballot. Let me say that if a town does not have a fax machine, they don't have to go out and get one under this statute.

SENATOR BARNES: Senator Flanders, does this just go for faxes? Is email excluded?

SENATOR FLANDERS: It is interesting that we brought that up in the hearing, about email and I think that it was decided that at some point in the future that also will be allowed, but it is not in this bill.

SENATOR BARNES: I thought that we were coming into the 21 century.

SENATOR FLANDERS: Well we are about 2020 and one-half. We may go email next year maybe. It did come up at the hearing and the people had discussed it in the House and they decided to leave email out because most towns have computers, but it is in-house computers for doing their taxes and so forth and a lot of them do not have the email.

SENATOR BARNES: I thought that they were thinking of dinosaurs like myself who don't have it.

**Adopted.**

**Ordered to third reading.**

**HB 246**, relative to availability of absentee voting applicant lists. Internal Affairs Committee. Ought to pass, Vote 5-0. Senator Larsen for the committee.

SENATOR LARSEN: Thank you Mr. President. I move HB 246 ought to pass. House Bill 246 permits persons bearing notarized requests or copies of notarized requests from candidates whose names appear on the ballot to obtain copies of absentee voter requests. Current law only permits the candidates themselves to appear in person to request absentee voter lists. Requests for absentee voter lists begin coming into town and city clerks as soon as the candidates are known and certified. Obviously, it is inefficient for each candidate to appear personally and request absentee voter lists. This legislation permits campaign workers with notarized requests from the candidate to be able to obtain the lists. The Internal Affairs Committee recommends that HB 246 be adopted.

**Adopted.**

**Ordered to third reading.**

**HB 260**, relative to checklists used on election day. Internal Affairs Committee. Ought to pass, Vote 5-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move that HB 260 ought to pass. House Bill 260 permits a municipality that prepares a separate checklist solely for the use at a state election to omit voter's mailing address, if it is different from the residential address. This legislation was filed at the request of the town of Derry. And probably would only apply to the town of Derry because Derry is not divided into wards, the checklist they use at one of their polling places is extremely large with over 14,000 names. Allowing them to have the checklist that omits the extra columns for mailing addresses would make the document about 25 percent smaller and much easier to handle. The list used by the supervisor of the checklist and all other copies would continue to be required to have all information, including both addresses. This legislation is merely enabling, requiring no changes unless a municipality wishes to exercise the option. The Internal Affairs Committee supports this legislation and recommends its adoption. It is nice to be on House Bills. I am glad to see that we are disposing them. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 83**, relative to paralegals and legal assistants. Judiciary Committee. Ought to pass with amendment, Vote 4-1. Senator Roberge for the committee.

**Senate Judiciary**

**March 25, 2003**

**2003-0976s**

**10/03**

### **Amendment to SB 83**

Amend RSA 311:7 as inserted by section 1 of the bill by replacing it with the following:

311:7 Prohibition.

**I.** No person shall be permitted commonly to practice as an attorney in court unless ~~he~~ **the person** has been admitted by the court and taken the oath prescribed in RSA 311:6.

**II. A paralegal or legal assistant appearing under the direct supervision of an attorney admitted to practice in New Hampshire shall not be deemed to be commonly practicing as an attorney in court, provided that:**

**(a) An attorney responsible for the direct supervision of such paralegal or legal assistant shall comply with the rules of professional conduct adopted by the supreme court relating to paralegals and legal assistants and shall be familiar with the facts and legal issues with respect to any proceeding at which a paralegal or legal assistant may appear without the supervising attorney's presence.**

**(b) If a paralegal or legal assistant is appearing in court or in an administrative hearing without the presence of the supervising attorney, the attorney shall, by sworn statement, verify that the attorney is familiar with the facts of the matter and that, in the attorney's professional judgment, the paralegal or legal assistant is qualified to appear without the supervising attorney's presence. The attorney shall be liable for the acts of the paralegal or legal assistant performed in court without the supervising attorney's presence.**

**(c) A paralegal or legal assistant shall not be permitted to appear under the provisions of this section in a criminal matter or a civil commitment.**

SENATOR ROBERGE: Thank you Mr. President. I move SB 83 as ought to pass as amended. Senate Bill 83 provides that paralegal and legal assistants who are appearing under the direct supervision of an attorney admitted to practice law in New Hampshire shall not be deemed to be commonly practicing law in court. The responsible attorney shall comply with the rules of professional conduct adopted by the Supreme Court and shall be familiar with the facts and legal issues in the case. Also, the supervising attorney shall verify by sworn statement that they are familiar with the issues of the case and that the paralegal or legal assistant is qualified to appear without the presence of the supervising attorney. Under the provisions of the committee amendment, paralegals and legal assistants shall not be permitted to appear on behalf of clients in cases which involve either criminal matters or civil commitments when the freedom of the accused is at stake. The Judiciary Committee recommends SB 83 be adopted, including the amendment. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

SENATOR FOSTER: Thank you Mr. President. I rise in opposition to the committee report. This bill is a huge change in the operations of our court system and the administration of justice. I want to make sure that everybody understands what this bill does. It allows a paralegal or legal assistant, and I am going to get, in a moment, to what a paralegal and legal assistant really is, to appear in court with no lawyer. They will be able to represent the individual themselves. The intentions of the bill are good. The goal of the sponsor is to increase access to justice. I would have to agree that attorneys are expensive, very expensive. Heck, sometimes I ask myself whether I could afford me if I need me. But the rem-

edy here is really too far-reaching in my view. As I said it allows paralegals and legal assistants to go to court and represent people just like lawyers. The amendment, which was described for you, frankly, was mostly my work, as I tried to work with the bill, but the amendment just simply doesn't go far enough in my view to protect the public. The bill as drafted, basically relies completely on the integrity of the lawyer who is allegedly supervising a paralegal. I think that it will allow unscrupulous lawyers to set up paralegal mills, one lawyer and a bunch of paralegals. Are people really going to receive better representation under those circumstances? Will they even know that they are being represented by a paralegal as opposed to a lawyer? There is no requirement or disclosure in the bill anywhere. Overall, I say that there won't be better representation and it will really hurt the general public. Why do I say that? Because our state has no licensing or standards to become a paralegal. Absolutely none. Zero. What does Black's Law Dictionary define a paralegal to mean? It defines a paralegal to mean "A person who assists a lawyer in the practice of law, but who is not a licensed attorney". What is a legal assistant? Black's Law Dictionary defines legal assistant to mean "A paralegal or a legal secretary". So under this bill, a legal secretary can go to court and represent you. In essence, a paralegal can be anyone. No training is required. No high school degree, no college degree, no standards at all. They can know absolutely nothing about the legal system. All that happens is that a lawyer calls them a paralegal and guess what, they are. Don't get me wrong, many paralegals are great. If I didn't say that I would catch a lot of heck when I go back to my office. In my early years, they helped me immensely in my practice and many of them still do. A lot of them are great. A lot of them highly skilled professionals, but not all fit that bill. Now our state licenses a lot of professions. I asked Legislative Services to do some research on the licensing of professionals and this is what they produced for me. This book. It has 72 licensed professionals. Licenses that I guess this legislature decided was important to go forward and put standards on the professions. Let me name a few of them. Architects, Athletic Trainers, Barbers, Embalmers, Horse Trainers, Manicurists, Real Estate Brokers, Tattoo Practitioners, yet we are poised to pass a bill to permit untrained people to represent others in court in some of the most critical moments of their lives, and they can have no training whatsoever. It simply is a very bad idea. The "buyer beware" concept of the buyer beware is rejecting so many other professions, why is it okay here? I urge you to overturn the committee report of ought to pass so that I can substitute motion of inexpedient to legislate. Thank you.

SENATOR SAPARETO: Thank you Mr. President. Senator Foster, I just remember one of the names off the top of the list that you mentioned, were architects. Isn't it true that an engineer could draft a plan, draw up an entire building plan and then have an architect sign off on that plan, and present that and sell that under the protection of the architect, the licensed architect?

SENATOR FOSTER: If you tell me that is true, I imagine that is true. But there you are getting the oversight directly of the architect. He is reviewing somebody else's work. Here we are talking about somebody leaving an office, going down to court, without the lawyer present...let's be clear, the lawyer isn't present, they are back in their office, and that person on their own, has to make the decisions. The only thing that they are going to do is go back and say what happened, good or bad.

SENATOR SAPARETO: Thank you.

SENATOR ROBERGE: This legislation is really proactive. The court now allows paralegals to practice in probate court, this would expand it. Paralegals are under the direct supervision of the lawyer, and that covers that. In litigation these days, you are paying probably \$200 an hour for an lawyer, most lawyers at least, if not more than that, and really this going to the court is really for the rich these days. This would allow people to get somebody to represent them in court at much, much, less costs. A lot of these procedures as you know, are pretty routine. If the lawyer wants to send his paralegal and save the client a lot of costs, I don't see why you shouldn't be able to do that, if he is going to be responsible for the outcome.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise to speak against the piece of legislation. Let me just say briefly, talking about licensing. My father was a plumber. You know he had to get a license to do his work because plumbers needed to be licensed. You wouldn't want an amateur going into your house and fixing your plumbing. Now when you have a legal question, would you want someone who wasn't well trained, wasn't well educated who didn't manifest the skills to represent you? Anybody can be a paralegal. We license plumbers but you know we don't have a license or a certificate for a paralegal. Is it that we don't think that is important enough or is it that we are saying that maybe this person can go under the supervision of a lawyer, we are going to send them off to do something. I don't think so. Until paralegals have to qualify in some way and have to prove that they are qualified to do this work, then we shouldn't have them with these privileges. When you go to court, that is a risky situation. You want the best possible representation. Most of us have a genuine fear of going to court. I have been in district court on numerous occasions. Those of you who have visited district court know what it is like. You know the kind of activity that takes place there. The lawyer is basically the stabilizing influence in many situations. That representation cannot be made by a paralegal. You don't have that confidence. Working in the office under the supervision of a lawyer, that person can do the work. That person gains a great deal of experience, but taking a risk like this, I think, is a disservice to the consumer. It is a real disservice to the consumer. Thank you Mr. President.

SENATOR CLEGG: Thank you Mr. President. I rise in favor of the report. I would like to point out that in the amendment, it states that an attorney who is responsible for the direct supervision of such paralegal or legal assistant, shall comply with the rules of professional conduct adopted by the Supreme Court relating to that. Now we have already said in the amendment, that a paralegal or legal assistant can't represent someone in a criminal matter or a civil commitment. We go even further in another section and we say, "if a paralegal or a legal assistant is appearing in court or in an administrative hearing without the presence of the supervising attorney, the attorney by sworn statement shall verify that the attorney is familiar with the facts of the matter, and that in the attorney's professional judgement, the paralegal or legal assistant is qualified to appear without the supervision of the attorney." We have covered it. What we are saying is they can do it. You can't take somebody off the street who worked landscaping during the summer and decides to be a paralegal for the winter because it says in here that the attorney has to, by sworn affidavit or a sworn statement, say that they are qualified to do what they are doing. So I don't agree with the naysayers and I hope that this body passes this so we can get a little bit of relief in the legal system.



SENATOR LARSEN: I rise to oppose this bill. As you heard, we already license and register over 126 professions including athletic trainers, pedicurists, manicurists, estheticians. What is next? We license dental assistants for example. Does that mean that we are going to next say that they can drill our teeth? Do you want a dental assistant doing an extraction? What is next? Physicians' assistants doing surgery? There is a reason people get a higher degree. There is a reason people go to school and get a license and pass bar exams and other professional exams. There is a point where you have to ask for credentials from people to do the job they are doing. Often-times, some of the most critical issues are being debated in the courts. There is a very real fear that there will be the temptation to send in what are currently now, unlicensed, unregulated, undefined, legal assistants and paralegals. We don't even have a definition, a good definition and a registration of who they are and what their schooling has been. The real question too is, who is...will the consumer know that a paralegal has been sent in or will that consumer be paying the lawyers fees for a paralegal doing the job? It is a real question of, at what point are we going to stop? At what point are we going to recognize that people go to school, get higher degrees, because it takes a professional at times to do a job that is more difficult. I urge you to consider this and to consider, do you want dental assistants next, extracting your teeth? Do you want physicians' assistants in surgery? It is very similar. Thanks.

SENATOR FLANDERS: Thank you Mr. President. I presume, I guess this is a question. If I am the client and I don't want the paralegal to represent me, I presume that I am going to say that I want you or I want you to represent me. I would like to tell this assembly that I represented New Hampshire Insurance and American International as an attorney at the Labor Department for over 30 years and they are still in business, so I guess I did okay. Thank you.

SENATOR ROBERGE: Thank you Mr. President. There are some people who have a great case and they just can't afford to go to court, so they just don't bring the case forward. This would give them an opportunity to bring their course forward.

SENATOR BELOW: Senator Foster, if we were to defeat this, would this in any way, impede the power of the judiciary or any other bodies that this might pertain to, to allow at their reasonable discretion, other people to represent other parties as they do now?

SENATOR FOSTER: No, I wouldn't say that it would. Senator Roberge talked about the fact that paralegals apparently appear in probate court. My understanding is that they do that, though in what I would describe as a ministerial function of reporting on accounts and final accounts, but when you are talking about challenging wills or that sort of thing, I suspect that you don't find paralegals, so the judges make that judgement in that particular forum.

SENATOR BELOW: Aren't there instances when the court will allow someone who is not an attorney to represent someone if the court thinks that is a reasonable thing to do?

SENATOR FOSTER: This bill intends to expand that. If somebody does it on a regular basis then they are deemed to be commonly practicing law. This bill is intended to empower those people who do it on a random basis to do it full time.

SENATOR BELOW: Thank you.

SENATOR PETERSON: Thank you Mr. President. I have respect for those on both sides of this issue. Frankly, I looked with somewhat of a questioning eye on this bill when it first came to our committee. I think that there are a couple of points which Senators here might find helpful. The first is that licensure has been mentioned for the paralegals and the legal assistants. I doubt, however, that those who would be against them appearing in court would seriously suggest that it would be a greater protection to the individual so represented, to have their ticket at stake, the paralegals ticket at stake rather than the supervising attorneys ticket at stake, when they are represented by a paralegal in an action specifically under their direction and with their written authorization to do so. Secondly, there is a whole group which we haven't mentioned. Those are the people who appear in court without any legal assistance. Not those who don't bring a case, those who know it is important but come down to court. How many of those happen a year in the state of New Hampshire? The answer is thousands and thousands of the cases that are heard are heard on a so-called pro se basis. We had testimony in our committee from John MacIntosh, who is the representative of the New Hampshire Bar Association, that his estimate was that it is a full 40 percent of all the cases heard in the state of New Hampshire, are heard on a pro se basis. These people, the court system does not have sufficient resources to give legal guidance to. What this bill, brought forward by Senator Roberge, and very much improved by an amendment in committee by Senator Foster, seeks to do, is to open up the opportunity for these people to have some legal representation at a rate at which they could afford. I ask my colleagues here in the Senate to move it on in its progress, and see indeed it can become law and help people who are not served by all of the other commentary here today. Thank you.

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Cohen.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**The following Senators voted No: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 17 - Nays: 6**

**Adopted.**

**Ordered to third reading.**

**Recess.**

**Out of recess.**

**SB 109, adopting the model Drug Dealer Liability Act. Judiciary Committee. Inexpedient to legislate, Vote 3-2. Senator Foster for the committee.**

SENATOR FOSTER: Thank you Mr. President. I yield the floor to Senator Peterson.

SENATOR PETERSON: Thank you Mr. President. I ask my colleagues, as a courtesy to the Judiciary Committee to vote down the recommendation of inexpedient to legislate so that I might offer a substitute motion of rerefer. Thank you.

**Motion failed.**

**Senator Peterson moved to rerefer.**

**Adopted.**

**SB 109 is rereferred to committee.**

**SB 120**, relative to testimony by the state personnel in criminal cases. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

**Senate Judiciary**

**March 25, 2003**

**2003-0975s**

**03/01**

### **Amendment to SB 120**

Amend the title of the bill by replacing it with the following:

AN ACT relative to testimony by video teleconference in criminal cases.

Amend the bill by replacing section 1 with the following:

1 New Subdivision; Testimony by Video Teleconference in Criminal Cases. Amend RSA 516 by inserting after section 36 the following new subdivision:

Testimony by Video Teleconference in Criminal Cases

516:37 Testimony by Video Teleconference in Criminal Cases.

I. In any criminal case at which the state forensic toxicologist or any department of safety laboratory employee is summoned to testify, the state may move to take the testimony of the state forensic toxicologist or department of safety laboratory employee by video teleconference, provided that the testimony is limited to expert testimony or to the results of and matters relating to tests conducted by the toxicologist or at the department of safety laboratory. Notice shall be provided to the defendant, and the defendant shall have an opportunity to object to the introduction of testimony by video teleconference. No video teleconference testimony shall be permitted during a felony prosecution, except with the affirmative assent of the defendant. Examination and cross-examination of the toxicologist or department of safety laboratory employee shall proceed in the same manner as permitted at trial.

II. In any criminal case at which the defendant summons an expert witness to testify on matters within the jurisdiction of the state forensic toxicologist or department of safety laboratory, the defendant may move to take the testimony of the expert witness by video teleconference, provided that the testimony is limited to expert testimony or to the results of and matters relating to tests conducted by the state forensic toxicologist or at the department of safety laboratory. Notice shall be provided to the state, and the state shall have an opportunity to object to the introduction of testimony by video teleconference. No video teleconference testimony shall be permitted during a felony prosecution, except with the affirmative assent of the state. Examination and cross-examination of the expert witness shall proceed in the same manner as permitted at trial.

**2003-0975s**

### **AMENDED ANALYSIS**

This bill permits certain testimony to be taken by video teleconference in criminal cases, provided that the testimony is limited to expert testimony or to the results of and matters relating to tests conducted by the state forensic toxicologist or at the department of safety laboratory.

SENATOR CLEGG: Thank you Mr. President. I move SB 120 ought to pass with amendment. The bill was a request from the Department of Safety in order to allow video conferencing rather than having state personnel travel to court. The committee amendment limits the ability of video conference testimony to cases where the person is testifying as an expert witness or to the results of tests conducted by the state forensic toxicologist or at the Department of Safety Laboratory. Under a felony prosecution, no video teleconference testimony would be allowed unless the defendant or the state specifically agreed. The provisions of SB 120 as amended provide a controlled means to try video conferencing in these cases. It is a reasonable and responsible method to see if this process protects the rights of the accused and yet addresses the departments' concerns with having employees appearing at court so often. The Judiciary Committee recommends that SB 120 be adopted with amendment. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 204**, relative to bail recovery agents. Judiciary Committee. Rerefer to committee, Vote 5-0. Senator Peterson for the committee.

SENATOR PETERSON: Thank you Mr. President. I move that SB 204 be rereferred to committee. Senate Bill 204 sought to reorganize the method by which bail recovery agents are licensed in the state by moving licensure to the Secretary of State's office. We found that the woods were indeed dark and deep on this issue, both in terms of who should be the one to license these agents, also in terms of the requirement that no one who ever committed a felony could be licensed or one who had been doing the job for many years would have been affected, and also the requirement that all agents "be of good character", with no definition of "good character and no standards" included in the bill. Although it seeks to redress a problem which we feel does need consideration, we ask at this time, that you give the Judiciary Committee more time to consider all the aspects of this bill and rerefer it. Thank you.

SENATOR BARNES: Senator Peterson, last week we passed a weak bill that you might consider part of it for when you are looking at this, this summer, a good citizen award for I think it was... well for something. I forgot what the good citizen was for, but it might fit into what you are trying to do. It might be part of something that you could use and not redevelop the wheel.

SENATOR PETERSON: Thank you Senator Barnes, I wanted to get with Senator Sapareto on this, because my dog is a very good dog and I would like to get that award for my dog, so perhaps if we could get together on that later. Thank you.

SENATOR BARNES: Thank you.

**Committee report of rerefer is adopted.**

**HB 151**, authorizing the county convention to contract and fund performance audits of county departments. Public Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Roberge for the committee.

**Public Affairs**  
**March 26, 2003**  
**2003-0989s**  
**08/10**

### **Amendment to HB 151**

Amend the title of the bill by replacing it with the following:

AN ACT authorizing the county convention to contract and fund performance audits of county departments, and authorizing employees of the Hillsborough and Rockingham county delegations.

Amend the bill by replacing all after section 2 with the following:

3 County Delegation Employees; Hillsborough and Rockingham. Amend RSA 24:12-a to read as follows:

24:12-a Delegation Coordinators for Hillsborough and Rockingham Counties. The county conventions for Hillsborough and Rockingham counties shall each have the authority to employ a delegation coordinator *and other employees* who shall perform duties as required by the executive committee, subcommittees, and the legislative delegation.

4 Effective Date. This act shall take effect upon its passage.

**2003-0989s**

### **AMENDED ANALYSIS**

This bill allows the county convention of any county to contract for a performance audit of a county department, institution, or office. The cost of an audit is to be paid from a contingency fund expended by the county convention.

This bill also allows the Hillsborough and Rockingham county delegations to hire employees.

SENATOR ROBERGE: Thank you Mr. President. I move HB 151 ought to pass as amended. This bill will allow the county convention of any county to contract for a performance audit of the county department, institution or office. The cost of the audit will be paid from the contingency fund, expended by the county convention. Hillsborough and Rockingham county conventions will also have the opportunity to hire a delegation coordinator and other employees to perform audits. It is felt that granting county conventions the ability to contract out for a performance audit will help increase county government efficiency. The Public Affairs Committee recommends HB 151 ought to pass as amended and asks for your support.

### **Amendment adopted.**

SENATOR MARTEL: Thank you very much Mr. President. I have an amendment that is now being passed out. It is amending the title of the bill replacing it with the following: "Relative to the taxation of telecommunications poles and conduits, relative to adoption of revisions of city budget process in city charters." There are two minor changes, okay, in this. The word "special" was struck. And then at the end it says "upon passage" rather than the previous date that was on the bill. These are the only two changes that are there. I am asking you to adopt my amendment please.

SENATOR FLANDERS: My only question, Senator Martel, is, how come we didn't have this this morning so that we could have a chance to review it?

SENATOR MARTEL: We just got this amendment this afternoon.

SENATOR FLANDERS: Okay.

SENATOR BARNES: Thank you Mr. President. I am a little confused. We are talking about, what I understand to be HB 151 and what you have passed out is not germane to that bill. What it says on the top is SB 151. So I am a little confused. This has nothing to do with this HB 151 that the Public Affairs Committee unanimously voted for.

SENATOR MARTEL: That is an error. That is supposed to be HB 151.

SENATOR BARNES: Well if that is supposed to be HB 151, I challenge the germaness of it. It has nothing to do with this piece of legislation. This is county government. It has nothing to do with telephone poles, Senator.

**Recess.**

**Out of recess.**

SENATOR MARTEL: Thank you Mr. President. After being the brunt of everybody's joke here, okay, what happened here is that this amendment was supposed to be on HB 151 dealing with the county government and city charters. What happened is that the title was brought in on SB 151, so what I am going to do is I am going to ask for a tabling motion on this amendment, and we can look at this next week.

### **MOTION TO TABLE**

Senator Clegg moved to have **HB 151** laid on the table.

**Adopted.**

### **LAIID ON THE TABLE**

**HB 151**, authorizing the county convention to contract and fund performance audits of county departments.

**HCR 8**, urging the United States Congress to improve the prescription drug program provided to veterans. Public Affairs Committee. Ought to pass, Vote 4-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you Mr. President. I move HCR 8 ought to pass. This resolution urges the United States Congress to improve the prescription drug program provided to veterans and return to the \$2 prescription copayment pursuant to the Veterans Millennium Health Care and Benefits Act of 1999. This Health Care Act helped make prescriptions more affordable for our nations' veterans, but about a year ago, Congress increased the medication copayment to \$7 and applied it to each month's supply rather than each prescription refill. This means that a 3-month refill will cost them \$21 instead of \$2. These rate hikes have discouraged a number of veterans from going to the VA for their prescriptions and other procedures. At a time when veteran's health services are being cutback nationally, this is simply intolerable. I ask each and every one of you to please join me and the committee to support the motion of ought to pass so we can send a unified message to Washington that it's unacceptable to discourage veterans from seeking the health services they were promised. Thank you very much.

**Adopted.**

**Ordered to third reading.**

**SB 133**, relative to amending the charter of Dartmouth college. Public Institutions, Health and Human Services Committee. Ought to pass, Vote 5-0. Senator O'Hearn for the committee.

SENATOR O'HEARN: Thank you Mr. President. I move ought to pass on SB 133. Dartmouth College was originally granted its charter in 1769 by England's King George III. After independence, the authority to issue and amend charters such as Dartmouth College's charter was transferred to the state legislature, which has continued to hold this authority ever since. Today the legislature has generally abandoned the practice of issuing and amending charters in favor of allowing corporations to form under general enabling legislation such as RSA 292, which addresses the formation of nonprofit corporations. Senate Bill 133 provides that Dartmouth College would be permitted to amend its charter in accordance with section 7 of RSA 292, which provides for an amendment by a vote of the board of trustees. Dartmouth is requesting that the Governor of New Hampshire remain as the exofficio member of the colleges board of trustees, which is reflected in the bill. The committee unanimously recommends ought to pass on SB 133. Thank you.

SENATOR BOYCE: Senator O'Hearn, I would just like to know, did we request permission from the King to make this change – actually it is the Queen now?

SENATOR O'HEARN: I don't believe the Queen has any authority on this one.

SENATOR PETERSON: Thank you Mr. President. This bill, although a long overdue change is an important one to Dartmouth College, which is such a great asset to the state of New Hampshire. I was proud to sponsor this bill and thank Senator Below, who is a classmate of mine from Dartmouth, for his help with it, as well as the help that we have had from other members of the legislature. So I would like to thank Senator O'Hearn and the members of the committee for their responsive treatment to this request. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 153**, adopting the nurse licensure compact. Public Institutions, Health and Human Services Committee. Ought to pass with amendment, Vote 3-2. Senator Martel for the committee.

**Public Institutions, Health and Human Services**

**March 27, 2003**

**2003-1013s**

**08/01**

### **Amendment to SB 153**

Amend the bill by replacing all after the enacting clause with the following:

1 Definitions; Licensed Nurse. Amend RSA 326-B:2, XII-a to read as follows:

XII-a. "Licensed nurse" means an advanced registered nurse practitioner, registered nurse, or licensed practical nurse. ***Licensed nurse shall include nurses practicing as provided in the nurse licensure compact adopted in RSA 326-B:34.***

2 New Paragraph; Rulemaking; Nurse Licensure Compact. Amend RSA 326-B:4-a by inserting after paragraph XVII the following new paragraph:

XVIII. The implementation and coordination of the nurse licensure compact adopted in RSA 326-B:34, and according to the provisions of RSA 326-B:35.

3 New Section; Multistate Nurse Licensure Compact. Amend RSA 326-B by inserting after section 33 the following new sections:

326-B:34 Nurse Licensure Compact. The nurse licensure compact is adopted and entered into with all other jurisdictions that legally join the compact, which is substantially as follows:

## ARTICLE I

### FINDINGS AND DECLARATION OF PURPOSE

(a) The party states find that:

(1) The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

(2) Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

(3) The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

(4) New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex; and

(5) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

(b) The general purposes of this compact are to:

(1) Facilitate the states' responsibility to protect the public's health and safety;

(2) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

(3) Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;

(4) Promote compliance with the laws governing the practice of nursing in each jurisdiction; and

(5) Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

## ARTICLE II

### DEFINITIONS

In this compact:

(a) "Adverse action" means a home or remote state action.

(b) "Alternative program" means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.

(c) "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.

(d) "Current significant investigative information" means:

(1) Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or



(2) Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

(e) "Home state" means the party state which is the nurse's primary state of residence.

(f) "Home state action" means any administrative, civil, equitable, or criminal action permitted by the home state's laws which are imposed on a nurse by the home state's licensing board or other authority including actions against an individual's license such as: revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

(g) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

(h) "Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical/vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as: revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

(i) "Nurse," means a registered nurse or licensed practical/vocational nurse, as those terms are defined by each party's state practice laws.

(j) "Party state," means any state that has adopted this compact.

(k) "Remote state," means a party state, other than the home state:

(1) Where the patient is located at the time nursing care is provided; or

(2) In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

(l) "Remote state action" means:

(1) Any administrative, civil, equitable, or criminal action permitted by a remote state's laws which are imposed on a nurse by the remote state's licensing board or other authority including actions against an individual's multistate licensure privilege to practice in the remote state; and

(2) Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof.

(m) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(n) "State practice laws" means those individual party's state laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. The term, state practice laws, does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

## ARTICLE III

### GENERAL PROVISIONS AND JURISDICTION

(a) A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical/vocational nursing issued by a home state to a resident in that state will

be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical/vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

(b) Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(c) Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

(d) This compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

(e) Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

#### ARTICLE IV

##### APPLICATIONS FOR LICENSURE IN A PARTY STATE

(a) Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

(b) A nurse in a party state shall hold licensure in only one party state at a time, issued by the home state.

(c) A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

(d) When a nurse changes primary state of residence by:

(1) Moving between 2 party states, and obtains a license from the new home state, the license from the former home state is no longer valid;

(2) Moving from a nonparty state to a party state, and obtains a license from the new home state, the individual state license issued by the nonparty state is not affected and will remain in full force if so provided by the laws of the nonparty state;

(3) Moving from a party state to a nonparty state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

## ARTICLE V

### ADVERSE ACTIONS

In addition to the general provisions described in Article III, the following provisions apply:

(a) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

(b) The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action, and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

(c) A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

(d) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

(e) The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

(f) Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain non-public if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

## ARTICLE VI

### ADDITIONAL AUTHORITIES INVESTED IN PARTY STATE NURSE LICENSING BOARDS

Notwithstanding any other powers, party state nurse licensing boards shall have the authority to:

(a) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse;

(b) Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a nurse licensing board in a party state

for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located.

(c) Issue cease and desist orders to limit or revoke a nurse's authority to practice in their state;

(d) Promulgate uniform rules and regulations as provided for in Article VIII(c).

## ARTICLE VII

### COORDINATED LICENSURE INFORMATION SYSTEM

(a) All party states shall participate in a cooperative effort to create a coordinated data base of all licensed registered nurses and licensed practical/vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

(c) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(d) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(e) Any personally identifiable information obtained by a party states' licensing board from the coordinated licensure information system may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(f) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information, shall also be expunged from the coordinated licensure information system.

(g) The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

## ARTICLE VIII

### COMPACT ADMINISTRATION AND INTERCHANGE OF INFORMATION

(a) The head of the nurse licensing board, or his or her designee, of each party state shall be the administrator of this compact for his or her state.

(b) The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investi-

gations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this compact.

(c) Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states, under the authority invested under Article VI(d).

## ARTICLE IX

### IMMUNITY

No party state or the officers or employees or agents of a party state's nurse licensing board who acts in accordance with the provisions of this compact is liable on account of any act or omission in good faith while engaged in the performance of their duties under this compact. Good faith in this article does not include willful misconduct, gross negligence, or recklessness.

## ARTICLE X

### ENTRY INTO FORCE, WITHDRAWAL, AND AMENDMENT

(a) This compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 6 months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

(b) No withdrawal affects the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

(c) Nothing contained in this compact may be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

(d) This compact may be amended by the party states. No amendment to this compact becomes effective and binding upon the party states unless and until it is enacted into the laws of all party states.

## ARTICLE XI

### CONSTRUCTION AND SEVERABILITY

(a) This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance may not be affected thereby. If this compact is held contrary to the constitution of any state party thereto, the compact remains in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

(b) In the event party states find a need for settling disputes arising under this compact:

(1) The party states may submit the issues in dispute to an arbitration panel which will be comprised of an individual appointed by the compact administrator in the home state; an individual appointed

by the compact administrator in the remote state or states involved; and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute; and

(2) The decision of a majority of the arbitrators shall be final and binding.

326-B:35 Nurse Licensure Compact Model Rules. The board shall use the model rules and regulations developed for the nurse licensure compact by the National Council of State Boards of Nursing Inc., as the basis for adopting rules for the implementation of the nurse licensure compact adopted in RSA 326-B:34, and shall amend or modify these rules as necessary to comply with state statutes.

4 Effective Date. This act shall take effect 60 days after its passage.

SENATOR MARTEL: Thank you Mr. President. Senate Bill 153 became very controversial and as a matter of fact, earlier this afternoon, the two parties involved, the Nursing Board as well as the compact people, have agreed finally to sit down and discuss all of the problems that were facing them. What I did was...I am going to ask that my friends here in the Senate, vote down the amendment and also vote down the bill so that we can get a referral and send it back to the committee. So we need to have three motions here. First, is to vote down the amendment, then vote down the bill, and then we can get the rereferral motion.

### PARLIAMENTARY INQUIRY

SENATOR BOYCE: I just want to make sure that we really have to go through all of those votes and down the amendment and then the committee recommendation of ought to pass in order to get to rerefer?

SENATOR EATON (In the Chair): Yes we do.

SENATOR BOYCE: I thought that rerefer was a higher motion?

SENATOR EATON (In the Chair): We have been doing it in the rules this way. It takes a little bit longer unfortunately.

SENATOR BOYCE: Thank you.

**Amendment failed.**

**Question is on the adoption of the bill.**

**Motion failed.**

**Senator Martel moved to rerefer.**

SENATOR MARTEL: Thank you very much Mr. President. I ask the Senate to rerefer this bill to the Public Institutions Committee. The Board of Nursing and the New Hampshire Nurses Association have agreed to meet with the supporters of SB 153 and work with them to resolve the issues involved with telephonic nursing practice and any other issues which gave rise to this interstate nursing compact legislation. To make it easy, because of this agreement and as I said earlier, I think that it is a step in the right direction. Matter of fact, I know that it is a step in the right direction. I urge my fellow Senators to please vote for the rerefer motion.

**Adopted.**

**SB 153 is rereferred to committee.**

**SB 191**, creating a committee to study establishing a prescription drug program for the elderly and disabled. Public Institutions, Health and Human Services Committee. Inexpedient to legislate, Vote 5-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you very much Mr. President. As a result of the...SB 191 is creating a committee to establish a prescription drug program for the elderly and disabled. I move inexpedient to legislate on SB 191. The full Senate, just last week, sent a prescription drug program bill, SB 96, to the Finance Committee, which voted in favor of the legislation yesterday. Senate Bill 191 was originally put in as an insurance measure. I am glad to say that there is now no need for this bill and we look forward to implementing a prescription drug program in New Hampshire. The committee unanimously recommends inexpedient to legislate. Thank you Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**SB 169**, relative to frivolous actions against the state concerning state construction projects. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Morse for the committee.

**Senate Transportation**

**March 27, 2003**

**2003-1010s**

**06/09**

**Amendment to SB 169**

Amend RSA 507:15-a, I as inserted by section 2 of the bill by replacing it with the following:

I. If, upon the hearing of any action against the state pertaining to a state construction project, which has commenced after the necessary state and federal approvals for construction have been issued, it appears to the court that the action is frivolous or intended to otherwise harass or intimidate the prevailing party, then the court, upon motion of a prevailing party or on its own motion, may order summary judgment or other relief against the party who brought such action, and award the amount of costs and attorneys' fees incurred by the prevailing party. Costs shall include, but not be limited to, increased construction costs incurred by the state.

SENATOR MORSE: Thank you Mr. President. I move SB 169 ought to pass as amended. This bill allows the prevailing party in a lawsuit brought against a state construction project to recover costs, attorney fees, and damages that include any increased construction costs incurred by the state. Costs will only be awarded if the state project has already received all necessary state and federal permits and approvals to go ahead with the construction project and if the court finds the action brought against the state to be frivolous or otherwise intended to harass or intimidate the prevailing party. Once a project has received state and federal permits, they have already submitted their environmental impact statement, gone through public hearings, received public input, and spent months or years working on the design and construction plans. This process allows adequate time for any individual or organization to file a lawsuit if they feel there is something that will cause harm to the area in question. Delays increase the cost of a construction project and jeopardize New Hampshire jobs. The Transportation Committee spent weeks working on the wording of SB 169. We feel that the amended version of this bill is suitable to all parties concerned. It will not discourage citizens or organizations from suing the state if they have good cause while maintaining the bill's original intent to ensure the timely completion of state construction projects. The Transportation Committee voted in favor of SB 169 and recommends the motion of ought to pass as amended. Thank you.

**Amendment adopted.**

SENATOR FOSTER: Senator Morse, the amendment, I think, is an improvement over the original bill, but the question that I had as the bill as now amended, is normally in litigation, the prevailing party is not awarded attorneys fees by the other party. But there is a statute on the books that allows it under situations where there is frivolous or intended... or intended to harass types of lawsuits. Why did the committee decide that it wasn't enough to do that and it had to go further and add in the costs of the construction project? The cost of a construction project obviously to a litigant is going to be impossible to guess and it is sort of like an in terrorem provision, as I see it. Somebody might be able to estimate what the legal fees are going to be on the other side, but there is going to be no way when they start out on the project, to be able to figure out what the cost of a construction project might be.

SENATOR MORSE: Well, based today on construction projects, you are probably looking at 3 percent a year would be the increase in a construction project. The committee felt that that was only fair, if we are going to hold up state construction projects that someone pay for that beside the state.

SENATOR FOSTER: So in other words, the committee felt that awarding attorneys' fees wasn't enough of a deterrent so there had to be something additional into the law?

SENATOR MORSE: Yes.

SENATOR FOSTER: Thank you.

SENATOR CLEGG: Senator Morse, when you say that someone has frivolously held up construction and you say that it shouldn't be at the cost of the state. Don't you really mean that it shouldn't be at a cost to the taxpayers?

SENATOR MORSE: Yes.

SENATOR CLEGG: Thank you.

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 76**, relative to neighborhood electric vehicles. Transportation Committee. Ought to pass, Vote 5-0. Senator Below for the committee.

SENATOR BELOW: Thank you Mr. President. I move HB 76 ought to pass. This bill establishes equipment and operation requirements for neighborhood electric vehicles. These vehicles are defined as 4-wheeled electric vehicles that have a maximum speed which is greater than 20 mph but not greater than 25 mph and complies with federal safety standards established in 49 Code of Federal Regulation section 571.500. With the passage of HB 76, these vehicles will be allowed to drive on roads where the posted speed limit is 35 mph or less. The Departments of Safety and Environmental Services support this bill and the introduction of neighborhood electric vehicles to New Hampshire. They are environmentally friendly, produce no emissions directly, use no fuel, and are battery-powered. These vehicles are quiet to drive and are expected to reduce traffic congestion in towns. Neighborhood electric vehicles will be registered like regular cars and will carry normal car plates. The Transportation Committee recommends the motion of ought to pass for HB 76.



Senator Kenney has a brochure illustrating what these things look like if anyone is interested in one. There are a couple of dealers who are now carrying them. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 270**, relative to issuing drivers' licenses to aliens temporarily residing in the state. Transportation Committee. Ought to pass, Vote 5-0. Senator Flanders for the committee.

**SENATOR FLANDERS:** Thank you Mr. President and members of the Senate. I bet when you read this bill you said that there was no need of that.

**SENATOR EATON (In the Chair):** I think that is the car that they are going to be driving too!

**SENATOR FLANDERS:** Director Beecher came to us to testify on this bill and she testified...It was very hard for us to believe, but she testified and I asked her twice, that in the little state of New Hampshire, we have over 60 to 70 people a day applying for nonresident alien licenses. That was hard to believe. What happens is, under our present statutes, they don't have to show any proof that they can drive. They are coming into the Department of Safety and wanting to get a drivers license even though they have only been here maybe two weeks or two months. Some of them do not speak English very well and some of them do not read signs very well, and they have literally taken some of our hardworking, dedicated state employees out of the car with the jaws of life as they are trying to get back into the Department of Safety. So all that this does is gives the Director of Motor Vehicles the right to ask for proof of a license in another country or proof that they have completed an approved drivers education course before they can apply for a license in New Hampshire. Thank you for your attention.

**SENATOR BOYCE:** Thank you. I do believe that this bill is needed, but was there any discussion of going the next step further and requiring them to show proof of insurance or some financial responsibility, because I remember there was a problem with some diplomats who came over here and killed people with their cars, and then went home? Now I am sure that it would be a little more difficult for somebody who is not a diplomat to do that, but it occurs to me that somebody could get a drivers license, because they proved that they had driven a car in Iraq, and come over here and drive and do damage, kill somebody, and before we could proceed to lock them up, they might disappear back into the fabric of our grand country here and never show up again. I, personally think that we need to go beyond this. Was there any thought of doing that?

**SENATOR FLANDERS:** There was no discussion in the hearing.

**SENATOR BOYCE:** Thank you. Maybe we need to think about that next year.

**Adopted.**

**Ordered to third reading.**

**HB 271**, relative to walking disability plates and placards. Transportation Committee. Ought to pass, Vote 5-0. Senator Morse for the committee.

SENATOR MORSE: Thank you Mr. President. I move HB 271 ought to pass. This bill changes the validity period for walking disability plates and placards from 4 years to 5 years. Upon expiration, applicants will be required to provide satisfactory proof of their walking disability to the Director of Motor Vehicles. If the Director determines the disability that necessitated the issuance of the placard continues, they will receive a new plate or placard. Satisfactory proof can be certification by a licensed physician that the applicant meets the definition of a person with a walking disability. New Hampshire veterans will be exempt from this process if they have been previously evaluated by the United States Department of Veterans Affairs to be permanently and totally disabled from service connected disability. The Transportation Committee recommends HB 271 ought to pass and asks for your support. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 127**, authorizing the sweepstakes commission to license multi-hall linked bingo for charitable purposes. Ways and Means Committee. Inexpedient to legislate, Vote 3-1. Senator Clegg for the committee.

SENATOR CLEGG: Thank you Mr. President. I move inexpedient to legislate on SB 127. Bingo is an important revenue stream for charitable organizations and their community service projects. Although the bills intent is to give charitable organizations in the northern less populated parts of the state, an opportunity to compete with the well established bingo halls in the south, and in turn, revitalize the game of bingo state-wide, multi-hall linked bingo is a financial risk to the local charities, communities and economies where bingo is run. Currently, bingo is a local event and the money exchanged between the charity and the bingo players stays locally. Multi-hall linked bingo could remove as much as 77 percent or more of the money played on the game from the community which will hurt the restaurants, businesses and the already fragile economy up north that is supporting it, depend on the charities. Paper bingo games also act for a loss leader for Lucky Seven tickets. Lucky Seven is the real revenue generator for charities. With less people playing Lucky Seven, there will be even less dollars to support the charities and community service projects. Multi-hall linked bingo, which is currently played only on a small Indian reservation in the mid-west, is a concept that will not work well in New Hampshire and the committee recommends inexpedient to legislate. Thank you.

SENATOR COHEN: Senator Clegg, if what you are saying is accurate, why did I get so much mail from my local charities in support of this? Were they mislead?

SENATOR CLEGG: I think yes. The people who would be in charge of the actual machines, it was a great windfall for them and I don't think that everybody realized that, but it came out in our committee hearings, that that is exactly what would happen.

SENATOR COHEN: Thank you.

SENATOR BOYCE: I hadn't planned to speak on this but, one of the things that I did in analyzing this bill was I took the actual proceeds of an organization that does very well at bingo and Lucky Seven. They don't actually do very well at bingo because nobody makes money on bingo. It is as Senator Clegg said, a loss leader, but they do very well on the Lucky Sevens. I went under the assumption that they weren't going to

gain anymore people. That people were not going to come through the door with \$1 more, and would they make as much money under this electronic link bingo as they were making with the Lucky Sevens? The answer that I got, running the numbers through the formula of how it would be dispersed, was that they would lose about 30 percent of what they make on the Lucky Sevens if it all went through the bingo. Now if there is any other formula, or distribution, if less of it went to bingo and they stayed with some Lucky Sevens, they still would lose money. I couldn't find any way of putting that group of numbers through the formula that came up with the charity making any money, any extra money, they actually would lose. I went back the other way and said, well how much would they have to increase the number or dollars through the door in order to stay even? They would have to have about a 40 percent increase in the number of people or the number of dollars in the peoples pockets, coming through the door, to stay even. So this is not a money maker for the charities, this is a money maker for the people who own the centralized bingo electronic system. That is why I am against it. I am in favor of bingo and Lucky Sevens, but not this. Thank you.

SENATOR GATSAS: Thank you Mr. President. I just want to make sure that nobody jumps off out of there. For me to stand and speak in favor of inexpedient to legislate on this bill is probably going to shock a lot of people. But I can tell you that the study that we did two years ago, Senator Boyce's numbers were generous. That kind of return on the Lucky Sevens is where the charities make their money. The multi-hall bingo is going to hurt the charities. There is absolutely no question about that. So I urge my colleagues to inexpedient to legislate this bill.

SENATOR JOHNSON: Senator Gatsas, I am kind of curious. If they have the bingo, wouldn't they also sell the Lucky Seven tickets and get more people to play bingo and they would sell Lucky Seven tickets?

SENATOR GATSAS: Senator what we found in the study that we did, I think two years ago, and I think that Senator D'Allesandro was on that committee, is that the average the person goes in with is \$48. Somewhere around \$28 is spent on the bingo side and \$20 is spent on the Lucky Seven side. The assumption is that if they only have \$48, these video linked bingo games, you can play every six seconds. So I would think that the amount of that \$48 is going to go a lot quicker then spending an evening playing bingo.

SENATOR JOHNSON: Thank you.

SENATOR SAPARETO: Senator Gatsas, is it also possible in that study that people may bring more money than the \$48 because they can play every six seconds?

SENATOR GATSAS: They probably would bring more money, but that doesn't mean that the charity is going to make more money on it. Their percentage of return is much lower than what they make on the Lucky Sevens.

SENATOR SAPARETO: Thank you.

**Committee report of inexpedient to legislate is adopted.**

**Recess.**

**Out of recess.**

**SB 106**, relative to the operation of personal watercraft. Wildlife and Recreation Committee. Inexpedient to legislate, Vote 3-2. Senator Gatsas for the committee.

**MOTION TO TABLE**

Senator Gatsas moved to have **SB 106** laid on the table.

**Adopted.**

**LAI D ON THE TABLE**

**SB 106**, relative to the operation of personal watercraft.

**MOTION TO REMOVE FROM THE TABLE**

Senator Green moved to have **SB 69-FN-A** taken of the table.

**Adopted.**

**SB 69-FN-A**, combining the career incentive program and the nursing leveraged scholarship loan program within the department of postsecondary education, and establishing a workforce incentive program within the department of postsecondary education, and making an appropriation therefor.

SENATOR GREEN: I would ask that the Senate vote down the current amendment on the bill as currently before you as an ought to pass as amended. I would like to act on the amendment at this point, and ask the Senate members to vote no on that amendment, so that I may offer a new amendment.

**Question is on the adoption of the committee amendment (1055).**

**Amendment failed.**

Senator Green offered a floor amendment.

Sen. Green, Dist. 6

**April 3, 2003**

**2003-1140s**

**04/03**

**Floor Amendment to SB 69-FN-A**

Amend the bill by replacing section 6 with the following:

6 Appropriation. The sum of \$1 for the fiscal year ending June 30, 2004 is hereby appropriated to the postsecondary education commission to fund the workforce incentive program set forth in this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

SENATOR GREEN: Thank you Mr. President. At this time, I would like to offer a new amendment which is being handed out. What the amendment does is it leaves the sum of \$1 in the appropriation. Under the old amendment we had taken out the entire amount, which meant that we would have trouble in terms of making sure what we could look at in the budget process. We are making sure that it has a \$1 in it and it is still alive, and we discuss the issue of appropriation as part of the budget. I would so move the new amendment.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time,

that all bills and resolutions ordered to third reading be by this resolution read a third time and all titles be the same as adopted, and that they be passed at the present time

**Adopted.**

### **LATE SESSION**

#### **Third Reading and Final Passage**

**SB 15**, relative to election day registration.

**SB 16-FN**, establishing the governor's incentive and reward program.

**SB 18-FN**, relative to vehicle stops at railroad grade crossings.

**SB 19-FN**, relative to notification of groundwater contamination and requiring a certain report from the department of environmental services.

**SB 21**, relative to health insurance riders.

**SB 29-FN-A-L**, refunding certain meals and rooms taxes paid by the city of Manchester.

**SB 46-FN**, repealing the meat inspection account and the poultry inspection account.

**SB 60-FN**, relative to voluntary certification of persons installing or servicing propane gas or heating oil equipment.

**HB 64**, establishing a commission to study the creation of an integrated criminal justice information system and any issues related to the privacy, security, and dissemination of such criminal justice information.

**SB 64-FN**, relative to updating the drought management plan.

**HB 69**, relative to the reinstatement of expired licenses for architects.

**SB 69-FN-A**, combining the career incentive program and the nursing leveraged scholarship loan program within the department of postsecondary education, and establishing a workforce incentive program within the department of postsecondary education, and making an appropriation therefor.

**SB 72**, relative to the regulation of small loans, title loans, and payday loans.

**HB 76**, relative to neighborhood electric vehicles.

**SB 83**, relative to paralegals and legal assistants.

**SB 85-FN**, making certain revisions to the special education laws.

**SB 86-FN**, relative to disclosure of certain information about child fatalities and near fatalities resulting from abuse and neglect, and relative to accreditation of the department of health and human services by the Council on Accreditation for Children and Family Services.

**SB 90-FN**, increasing the cap for relocation assistance for businesses in eminent domain proceedings.

**HB 91**, relative to the telecommunications planning and development initiative and advisory committee.

**SB 91**, extending the committee to study eminent domain proceedings and adding certain duties.

**HB 99**, relative to absentee ballot requests.

**SB 99**, relative to high cost mortgage loans.

**SB 110**, relative to small group health insurance coverage.

**SB 115**, increasing the fees for review of subdivisions and waste disposal systems by the department of environmental services and making an appropriation for implementing information technology and regulatory process improvements.

**SB 120**, relative to testimony by video teleconference in criminal cases.

**SB 128-FN**, transferring the bureau of vital records and health statistics from the department of health and human services to the department of state.

**SB 129**, relative to the board of tax and land appeals and eminent domain cases.

**SB 133**, relative to amending the charter of Dartmouth college.

**SB 140-FN**, establishing an optional renewal period for licenses to carry a pistol or revolver.

**SB 142-FN**, relative to advertisements on utility poles and highway signs.

**SB 145-FN-A**, relative to the duties of the board of trustees of the department of regional community-technical colleges.

**SB 149-FN**, establishing criminal penalties for the use of a credit card scanning device or reencoder to defraud.

**SB 161**, relative to procedures in eminent domain proceedings.

**SB 163-FN**, relative to the procedures of the health services planning and review board.

**SB 169**, relative to frivolous actions against the state concerning state construction projects.

**SB 174**, relative to scheduled permanent impairment awards and remedial care under workers' compensation.

**SB 177**, relative to credit unions.

**SB 199**, revising the nurse practice act.

**SB 201**, establishing a committee to study insurance practices relative to homeowner's insurance.

**SB 226-L**, increasing the homestead exemption.

**SB 229**, making reference changes to the school building aid statutes.

**HB 233**, relative to the nuclear planning and response program.

**HB 246**, relative to availability of absentee voting applicant lists.

**HB 260**, relative to checklists used on election day.

**HB 270**, relative to issuing drivers' licenses to aliens temporarily residing in the state.

**HB 271**, relative to walking disability plates and placards.

**HB 502**, establishing a committee to study options for reducing the impact of exhaust emissions from diesel engines in New Hampshire.

**HCR 8**, urging the United States Congress to improve the prescription drug program provided to veterans.

### ANNOUNCEMENTS

SENATOR EATON (RULE #44): I would like to read an official statement: "Senator Joseph Kenney, Republican of the Union, will be mobi-

lized to support Operation Enduring Freedom in early May. Kenney is a reserve Marine Major who is attached to Marine Support Battalion Company B Fort Mead, Maryland." We deeply appreciate Senator Kenney's dedication and service to our country and to our state and citizens, and we wish you and your family well and your speedy return.

**SENATOR PRESCOTT (RULE #44):** Thank you Mr. President. As you know, two weeks ago today my father passed away. I want to thank the Senate for their kind gestures this whole time through this situation. I want to say that I love my father, for the record. That he gave me the best years of his life. Thank you very much.

### **RESOLUTION**

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, processing Enrolled Bill Reports and Amendments, and receiving House Messages, and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

**In recess to the Call of the Chair.**

**Out of Recess.**

**April 4, 2003**

**2003-1169-EBA**

**05/09**

### **Enrolled Bill Amendment to HB 128**

The Committee on Enrolled Bills to which was referred HB 128

**AN ACT** relative to the treatment of horses.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

### **FOR THE COMMITTEE**

#### **Explanation to Enrolled Bill Amendment to HB 128**

This enrolled bill amendment makes a technical correction by inserting a gender neutral reference.

### **Enrolled Bill Amendment to HB 128**

Amend RSA 435:12 as inserted by section 1 of the bill by replacing line 4 with the following:

mutilate or abandon any horse, or aid in such abuse, or permit any horse in his *or her* care to be subject to

Senator Eaton moved adoption.

**Adopted.**

### **HOUSE MESSAGE**

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 121**, relative to grounds for modification of a permanent child custody order.

**HB 153-FN**, relative to grounds for termination of parental rights.

**HB 214**, relative to discovery deposition of minors in criminal cases.

**HB 269-FN**, relative to claims arising from clinical services provided to the department of health and human services.

**HB 323**, relative to the task force on family law.

**HB 521-FN**, relative to requiring treatment for persons convicted of DWI offenses.

**HB 633-FN**, establishing the interstate compact for adult offender supervision.

**HB 766**, relative to the information required for a license to carry a pistol or revolver.

### INTRODUCTION OF HOUSE BILLS

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **121 - 766** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 121**, relative to grounds for modification of a permanent child custody order. (Judiciary)

**HB 153-FN**, relative to grounds for termination of parental rights. (Judiciary)

**HB 214**, relative to discovery deposition of minors in criminal cases. (Judiciary)

**HB 269-FN**, relative to claims arising from clinical services provided to the department of health and human services. (Insurance)

**HB 323**, relative to the task force on family law. (Judiciary)

**HB 521-FN**, relative to requiring treatment for persons convicted of DWI offenses. (Judiciary)

**HB 633-FN**, establishing the interstate compact for adult offender supervision. (Interstate Cooperation)

**HB 766**, relative to the information required for a license to carry a pistol or revolver. (Wildlife and Recreation)

### HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 81-FN-A**, setting the rate for the medicaid enhancement tax for the biennium ending June 30, 2005.

**HB 213**, relative to reporting requirements for dedicated funds.

**HB 303**, relative to life, accident, and health technicals.

**HB 368**, making technical corrections to the statutory list of dedicated funds.

**HB 394**, relative to incompatible offices.

**HB 528**, establishing a commission to study computer standards used in public schools in New Hampshire.

**HB 531**, relative to off-site improvements imposed on applicants to a planning board.



**HB 598-FN-A**, relative to the agriculture nutrient management program and making an appropriation therefor.

**HB 606**, establishing a right-to-know study commission.

**HB 616-FN-L**, relative to the Hampton real estate trust fund.

**HB 693-FN**, relative to the jurisdiction and constitution of the ballot law commission.

**HB 720-FN-L**, extending the kindergarten aid program.

**HB 752**, relative to the distribution of business tax revenues to the education trust fund.

**HB 770-FN-A**, establishing a committee to study using tax policy to create incentives to encourage employers to hire disabled persons.

**HB 773**, establishing a committee to study a tuition tax credit program.

**HB 805**, establishing a consensus revenue estimating panel.

### INTRODUCTION OF HOUSE BILLS

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **81 - 805** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 81-FN-A**, setting the rate for the medicaid enhancement tax for the biennium ending June 30, 2005. (Ways and Means)

**HB 213**, relative to reporting requirements for dedicated funds. (Executive Departments and Administration)

**HB 303**, relative to life, accident, and health technicals. (Insurance)

**HB 368**, making technical corrections to the statutory list of dedicated funds. (Executive Departments and Administration)

**HB 394**, relative to incompatible offices. (Internal Affairs)

**HB 528**, establishing a commission to study computer standards used in public schools in New Hampshire. (Education)

**HB 531**, relative to off-site improvements imposed on applicants to a planning board. (Transportation)

**HB 598-FN-A**, relative to the agriculture nutrient management program and making an appropriation therefor. (Environment)

**HB 606**, establishing a right-to-know study commission. (Internal Affairs)

**HB 616-FN-L**, relative to the Hampton real estate trust fund. (Energy and Economic Development)

**HB 693-FN**, relative to the jurisdiction and constitution of the ballot law commission. (Internal Affairs)

**HB 720-FN-L**, extending the kindergarten aid program. (Finance)

**HB 752**, relative to the distribution of business tax revenues to the education trust fund. (Ways and Means)

**HB 770-FN-A**, establishing a committee to study using tax policy to create incentives to encourage employers to hire disabled persons. (Insurance)

**HB 773**, establishing a committee to study a tuition tax credit program. (Ways and Means)

**HB 805**, establishing a consensus revenue estimating panel. (Ways and Means)

### **HOUSE MESSAGE**

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 259**, relative to the regulation of gift certificates under the consumer protection act.

**HB 546**, relative to uniform prescription drug information cards.

**HB 699-FN**, relative to abandoned vehicles.

### **INTRODUCTION OF HOUSE BILLS**

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **259 - 699** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

#### **First and Second Reading and Referral**

**HB 259**, relative to the regulation of gift certificates under the consumer protection act. (Public Affairs)

**HB 546**, relative to uniform prescription drug information cards. (Insurance)

**HB 699-FN**, relative to abandoned vehicles. (Transportation)

### **HOUSE MESSAGE**

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 261**, relative to lucky 7 licenses.

**HB 524-FN**, relative to the annulment of certain domestic violence offenses.

**HB 680-FN**, establishing a committee to study service contracts and repealing the law regarding legal services insurance.

**HB 748**, making changes to the laws governing off highway recreational vehicles and the multi-use statewide trail system.

**HB 778-LOCAL**, relative to the city of Manchester school district.

### **INTRODUCTION OF HOUSE BILLS**

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **261 - 778** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

#### **First and Second Reading and Referral**

**HB 261**, relative to lucky 7 licenses. (Ways and Means)

**HB 524-FN**, relative to the annulment of certain domestic violence offenses. (Judiciary)

**HB 680-FN**, establishing a committee to study service contracts and repealing the law regarding legal services insurance. (Judiciary)

**HB 748**, making changes to the laws governing off highway recreational vehicles and the multi-use statewide trail system. (Wildlife and Recreation)

**HB 778-LOCAL**, relative to the city of Manchester school district. (Public Affairs)

### HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 543**, relative to increasing the membership of the board of accountancy and relative to appeals of board decisions.

**HB 547**, relative to the duties of the oversight committee on telecommunications and relative to the membership of the Mount Washington Commission.

**HB 558**, relative to financial reports on bingo and lucky 7 operations.

**HB 562**, relative to an additional duty of the air pollution advisory committee.

**HB 568-LOCAL**, relative to legal residency for the purpose of public school education.

**HB 596-FN**, relative to health plan loss information.

**HB 601**, relative to the long-term care insurance act.

**HB 605-FN**, relative to prohibited election day activity.

**HB 615-FN**, relative to the requirements for registration of sexual offenders.

**HB 617-FN**, relative to the licensure of dentists and regulation by the board of dental examiners.

**HB 620-FN**, providing a right to counsel for indigent parents and other protections in cases involving the guardianship of minors.

**HB 630-FN**, relative to enhanced penalties for assault on law enforcement officers, firefighters, emergency medical care providers, and national guard members.

**HB 674-FN**, relative to legal representation for indigent parties and notification requirements under the Child Protection Act.

**HB 676-FN**, relative to lake level investigations.

**HB 690-FN**, relative to agricultural crop damage.

**HB 694-FN**, relative to tobacco product manufacturers not entering master settlement agreements.

### INTRODUCTION OF HOUSE BILLS

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **543 - 694** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

**First and Second Reading and Referral**

**HB 543**, relative to increasing the membership of the board of accountancy and relative to appeals of board decisions. (Executive Departments and Administration)

**HB 547**, relative to the duties of the oversight committee on telecommunications and relative to the membership of the Mount Washington Commission. (Energy and Economic Development)

**HB 558**, relative to financial reports on bingo and lucky 7 operations. (Ways and Means)

**HB 562**, relative to an additional duty of the air pollution advisory committee. (Energy and Economic Development)

**HB 568-LOCAL**, relative to legal residency for the purpose of public school education. (Education)

**HB 596-FN**, relative to health plan loss information. (Insurance)

**HB 601**, relative to the long-term care insurance act. (Insurance)

**HB 605-FN**, relative to prohibited election day activity. (Internal Affairs)

**HB 615-FN**, relative to the requirements for registration of sexual offenders. (Judiciary)

**HB 617-FN**, relative to the licensure of dentists and regulation by the board of dental examiners. (Executive Departments and Administration)

**HB 620-FN**, providing a right to counsel for indigent parents and other protections in cases involving the guardianship of minors. (Judiciary)

**HB 630-FN**, relative to enhanced penalties for assault on law enforcement officers, firefighters, emergency medical care providers, and national guard members. (Judiciary)

**HB 674-FN**, relative to legal representation for indigent parties and notification requirements under the Child Protection Act. (Judiciary)

**HB 676-FN**, relative to lake level investigations. (Environment)

**HB 690-FN**, relative to agricultural crop damage. (Wildlife and Recreation)

**HB 694-FN**, relative to tobacco product manufacturers not entering master settlement agreements. (Ways and Means)

**HOUSE MESSAGE**

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 413-LOCAL**, relative to certain appeals proceedings when the taxpayer prevails.

**HB 418**, relative to annulment of arrest records for defendants whose cases result in acquittal, dismissal, or failure to prosecute.

**HB 420**, relative to state-owned trails and parking lots in the town of Windham.

**HB 423**, relative to safe deposit boxes.

**HB 424**, relative to a net asset qualification for the elderly property tax exemption, and clarifying certain references in property tax exemptions.

**HB 446**, relative to building permits.

**HB 447**, limiting retroactive child support awards under the uniform act on paternity.

**HB 455**, relative to residency requirements for disabled persons applying for a tax deferral of property taxes.

**HB 460-FN**, relative to property and casualty insurance.

**HB 466**, relative to the adoption procedure for property tax exemptions and credits.

**HB 467**, allowing towns or cities to increase the property tax credit for service-connected total disability, and relative to the date for filing for exemptions and tax credits.

**HB 468**, relative to enforcement of the labor protection statutes.

**HB 470**, relative to health insurance providers.

**HB 481**, establishing a committee to study the pricing of milk products.

**HB 486**, relative to access to child support enforcement records.

**HB 495**, relative to unauthorized access to a wireless computer network.

**HB 506**, relative to health club membership initiation fees and renewal practices.

**HB 507**, relative to certain statutes that set minimum requirements for employee benefit plan procedures pertaining to the filing of benefit claims, notification of benefit determinations, and appeal of adverse benefit determinations.

**HB 509**, relative to access to motor vehicle records.

**HB 529**, relative to the New Hampshire seed law.

### INTRODUCTION OF HOUSE BILLS

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **413 - 529** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 413-LOCAL**, relative to certain appeals proceedings when the taxpayer prevails. (Public Affairs)

**HB 418**, relative to annulment of arrest records for defendants whose cases result in acquittal, dismissal, or failure to prosecute. (Judiciary)

**HB 420**, relative to state-owned trails and parking lots in the town of Windham. (Wildlife and Recreation)

**HB 423**, relative to safe deposit boxes. (Banks)

**HB 424**, relative to a net asset qualification for the elderly property tax exemption, and clarifying certain references in property tax exemptions. (Ways and Means)

**HB 446**, relative to building permits. (Energy and Economic Development)

**HB 447**, limiting retroactive child support awards under the uniform act on paternity. (Judiciary)

**HB 455**, relative to residency requirements for disabled persons applying for a tax deferral of property taxes. (Ways and Means)

**HB 460-FN**, relative to property and casualty insurance. (Insurance)

**HB 466**, relative to the adoption procedure for property tax exemptions and credits. (Ways and Means)

**HB 467**, allowing towns or cities to increase the property tax credit for service-connected total disability, and relative to the date for filing for exemptions and tax credits. (Ways and Means)

**HB 468**, relative to enforcement of the labor protection statutes. (Insurance)

**HB 470**, relative to health insurance providers. (Insurance)

**HB 481**, establishing a committee to study the pricing of milk products. (Wildlife and Recreation)

**HB 486**, relative to access to child support enforcement records. (Judiciary)

**HB 495**, relative to unauthorized access to a wireless computer network. (Judiciary)

**HB 506**, relative to health club membership initiation fees and renewal practices. (Public Affairs)

**HB 507**, relative to certain statutes that set minimum requirements for employee benefit plan procedures pertaining to the filing of benefit claims, notification of benefit determinations, and appeal of adverse benefit determinations. (Insurance)

**HB 509**, relative to access to motor vehicle records. (Transportation)

**HB 529**, relative to the New Hampshire seed law. (Wildlife and Recreation)

### HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 60**, changing the name of the advisory committee on shore fisheries and relative to the definition of shellfish and a rulemaking exemption for certain rules relating to marine species.

**HB 107**, relative to bingo.

**HB 112-FN**, establishing a point system for the annual moose permit lottery.

**HB 122**, relative to an informed jury.

**HB 123**, relative to notice given to putative fathers in adoption proceedings.

**HB 134-FN**, relative to recommendations, appointments, and qualifications of marital masters and procedures for cases heard by marital masters.

**HB 139**, relative to the collection and reporting of school drop-out, suspension, and expulsion data and relative to the deadlines for submitting certain reports to the department of education.

**HB 162**, relative to remedies and penalties for injuries to domestic animals caused by dogs.

**HB 175**, relative to membership of attorneys in the New Hampshire Bar Association and lobbying by the Bar Association.

**HB 177**, excluding stepchildren from the definition of "child" in the context of support orders.

**HB 184**, relative to distribution upon intestacy.

**HB 185**, relative to pretermitted heirs.

**HB 205**, relative to the use of criminal records and reports.

**HB 208**, relative to name changes for inmates and parolees.

**HB 210-FN-A**, relative to passenger tramway registration fees and relative to carnival or amusement ride fees.

### INTRODUCTION OF HOUSE BILLS

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **60 - 210** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 60**, changing the name of the advisory committee on shore fisheries and relative to the definition of shellfish and a rulemaking exemption for certain rules relating to marine species. (Wildlife and Recreation)

**HB 107**, relative to bingo. (Ways and Means)

**HB 112-FN**, establishing a point system for the annual moose permit lottery. (Wildlife and Recreation)

**HB 122**, relative to an informed jury. (Judiciary)

**HB 123**, relative to notice given to putative fathers in adoption proceedings. (Judiciary)

**HB 134-FN**, relative to recommendations, appointments, and qualifications of marital masters and procedures for cases heard by marital masters. (Judiciary)

**HB 139**, relative to the collection and reporting of school drop-out, suspension, and expulsion data and relative to the deadlines for submitting certain reports to the department of education. (Education)

**HB 162**, relative to remedies and penalties for injuries to domestic animals caused by dogs. (Wildlife and Recreation)

**HB 175**, relative to membership of attorneys in the New Hampshire Bar Association and lobbying by the Bar Association. (Judiciary)

**HB 177**, excluding stepchildren from the definition of "child" in the context of support orders. (Judiciary)

**HB 184**, relative to distribution upon intestacy. (Judiciary)

**HB 185**, relative to pretermitted heirs. (Judiciary)

**HB 205**, relative to the use of criminal records and reports. (Judiciary)

**HB 208**, relative to name changes for inmates and parolees. (Executive Departments and Administration)

**HB 210-FN-A**, relative to passenger tramway registration fees and relative to carnival or amusement ride fees. (Transportation)

### HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 178**, relative to detention for violations of protective orders.

**HB 192**, relative to disposal of controlled drugs in possession of law enforcement officers.

**HB 194**, relative to appeals in landlord/tenant actions.

**HB 215**, relative to expungement of records contained in the DNA database.

**HB 248**, requiring the disclosure of information to victims in juvenile delinquency cases.

**HB 258**, relative to the community-technical college system.

**HB 299**, removing judicial discretion to order a divorced parent to contribute to an adult child's college expenses.

**HB 320**, relative to permitting additional contributions in the city of Manchester employees contributory retirement system.

**HB 461**, establishing a commission to study financial exploitation of the elderly and persons with disabilities.

**HB 487**, relative to protective custody of a person impaired by drugs.

### INTRODUCTION OF HOUSE BILLS

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **178 - 487** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 178**, relative to detention for violations of protective orders. (Judiciary)

**HB 192**, relative to disposal of controlled drugs in possession of law enforcement officers. (Judiciary)

**HB 194**, relative to appeals in landlord/tenant actions. (Public Affairs)

**HB 215**, relative to expungement of records contained in the DNA database. (Judiciary)

**HB 248**, requiring the disclosure of information to victims in juvenile delinquency cases. (Judiciary)

**HB 258**, relative to the community-technical college system. (Executive Departments and Administration)

**HB 299**, removing judicial discretion to order a divorced parent to contribute to an adult child's college expenses. (Judiciary)

**HB 320**, relative to permitting additional contributions in the city of Manchester employees contributory retirement system. (Executive Departments and Administration)

**HB 461**, establishing a commission to study financial exploitation of the elderly and persons with disabilities. (Public Affairs)

**HB 487**, relative to protective custody of a person impaired by drugs. (Judiciary)



**LATE SESSION**

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*April 10, 2003*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good morning! Magnanimity, according to the dictionary, is "the quality of having a noble, generous, forgiving, unselfish and gracious heart and mind and disposition". This is a good day to think about magnanimity because 138 years ago yesterday, Grant received Lee's surrender at the Appomattox Court House, ending the Civil War. Yesterday we saw what appears to be the beginning of the end of the war in Iraq. So it is a good day to think about magnanimity, over there and in here. The word comes from two Latin root words: "magna" meaning great or large, and "animus" meaning soul. So magnanimity means being great of spirit. And that is your calling and mine. It is an attitude that victors have to always remember to cultivate. Military victors have to foster it, and just as importantly, legislative victors have to foster it. So may we all remember that when we find ourselves on the winning side, lest an apparent triumph and victory be transformed into an experience that shrinks our souls and deadens our dreams instead.

Let us pray:

*Gracious God of the gigantic heart, expand each one of us into more and more of what You want us to be, that, with the stretching power of Your love, we may have the capacity, in the face of our own successes and triumphs, to become Great Souled victors, whose actions brings dignity to each and to all.*

*Amen.*

Senator Clegg led the Pledge of Allegiance.

**INTRODUCTION OF GUESTS****COMMITTEE REPORTS**

**SB 114**, implementing an unsafe school choice option for pupils attending schools which have been classified as persistently dangerous and authorizing the state board of education to implement a complaint process to address school safety and school violence issues in nonpublic schools. Education Committee. Ought to pass with amendment, Vote 4-0. Senator O'Hearn for the committee.

**Senate Education**

**April 3, 2003**

**2003-1119s**

**04/09**

**Amendment to SB 114**

Amend the bill by replacing section 1 with the following:

1 New Chapter; Persistently Dangerous Schools. Amend RSA 193 by inserting after chapter 193-F the following new chapter:

## CHAPTER 193-G

## PERSISTENTLY DANGEROUS SCHOOLS

## 193-G:1 Persistently Dangerous Schools.

I. A persistently dangerous school is a school in which 3 of the following acts have occurred, while classes are in session and while on school grounds, as separate incidents during the period of one school year for 3 consecutive years:

- (a) Homicide under RSA 630.
- (b) First or second degree assault under RSA 631:1 and RSA 631:2.
- (c) Aggravated felonious sexual assault under RSA 632-A:1.
- (d) Arson under RSA 634:1.
- (e) Robbery as a class A felony under RSA 636:1, III; or
- (f) Unlawful possession or sale of a firearm or other dangerous weapon under RSA 159.

II. The incident as defined in paragraph I must occur within the school or on school grounds, during regular school hours or during a school-sponsored event.

193-G:2 Citizen's Advisory Committee. If a school is classified as a persistently dangerous school, the local school board shall establish a citizen's advisory committee to examine the conditions which led to the designation and offer input to the school board and administrators on steps which might be taken to remedy the designation and prevent further incidents. The committee shall be appointed by the local school board chairman with the advice of the local school board members. It shall include but not be limited to the principal of the designated school, the superintendent of the designated school, one member of the school board, one teacher employed at the designated school, and one law enforcement official from the police department having jurisdiction in the district in which the designated school is located. The committee shall serve until the designation of a persistently dangerous school is removed.

193-G:3 Removal of Designation. Any school which is designated a persistently dangerous school, which for 2 consecutive years has operated as a safe school, shall be decertified as a persistently dangerous school. For the purposes of this section, a safe school is a school which has not had the number or frequency of qualifying events set forth in this section.

## 193-G:4 School Choice.

I. Any school which is designated a persistently dangerous school shall, within 20 days of being notified of such designation, notify the parents or guardians of students attending the school of their option to transfer their children from the school to a school within the same school district, consistent with local school board policy.

II. If a student is the victim of any offense set forth in paragraph I, the school district shall, within 20 days of being notified of the incident, notify the parents or guardian of the student of the option to transfer the student to another school within the same school district, consistent with local school board policy.

193-G:5 Department of Education Authority. The commissioner of the department of education shall be the certifying authority under this chapter.

2003-1119s

## AMENDED ANALYSIS

This bill establishes persistently dangerous school policy in compliance with the No Child Left Behind Act of 2001, and authorizes the state board of education to implement a complaint process to address school safety and school violence issues in nonpublic schools.

SENATOR O'HEARN: Thank you Mr. President. I move SB 114 ought to pass with amendment. This legislation is necessary to comply with the federal legislation in the No Child Left Behind Act. Federal money is dependent upon the definition of a persistently dangerous school for all states. The amendment improves upon the definition by more clearly delineating what qualifies a school for being persistently dangerous and how to have the label removed. This legislation also gives the state Board of Education rulemaking authority in order to establish a process concerning complaints from parents or guardians in nonpublic schools. There were concerns raised that students safety needed to be addressed at a nonpublic state approved school and there is currently no clear line of jurisdiction. This provides an opportunity for a hearing at the state Board of Education. The Education Committee asks for your support for the motion of ought to pass with amendment. Thank you.

**Amendment adopted.**

Senator O'Hearn offered a floor amendment.

Sen. O'Hearn, Dist. 12

**April 8, 2003**

**2003-1203s**

**04/10**

**Floor Amendment to SB 114**

Amend RSA 193-G:4, II as inserted by section 1 of the bill by replacing it with the following:

II. If a student is the victim of any offense set forth in RSA 193-G:1, I, the school district shall, within 20 days of being notified of the incident, notify the parents or guardian of the student of the option to transfer the student to another school within the same school district, consistent with local school board policy.

SENATOR O'HEARN: I rise to offer a floor amendment. It is an amendment that just changes a reference to a specific section in law which we inadvertently left out. I ask ought to pass.

**Floor amendment adopted.**

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist. 15

Sen. Cohen, Dist. 24

**April 10, 2003**

**2003-1259s**

**04/10**

**Floor Amendment to SB 114**

Amend RSA 193-G as inserted by section 1 of the bill by inserting after RSA 193-G:5 the following new section:

193-G:6 School Safety. Schools shall be authorized to implement policies promoting school safety.

SENATOR LARSEN: I rise to offer a floor amendment. It is a very simple amendment. What it does...as we were discussing persistently dangerous schools, it was called to my attention that if we must, by federal regulation, identify persistently dangerous schools, we have to guarantee that schools in fact, have the ability to implement policies promoting school safety. This simply clarifies that schools are authorized to promote policies for school safety. It is a one-line addition. I regret that in the course

of our discussion in Education, we were unable...this item did not...was not brought to my attention, but it is a very simple statement of policy. I urge you to vote yes on this floor amendment.

SENATOR BARNES: Thank you Mr. President. Senator Larsen, isn't that already available to schools to be able to do that? I am on the School Board in the town of Raymond and our policy is suggested by the Department of Education and that is certainly part of our policy in Raymond?

SENATOR LARSEN: Right, but what we are doing is creating a separate statute chapter 193 and we want to be certain that schools were very clearly authorized to promote policies that would obviously avoid the kind of persistently dangerous occurrences that you see listed in the bill. It is simply a clarification that school districts have that authorization within the chapter that guarantees or says that they have to create a safe school but it is not a persistently dangerous school. It is clarification and we did research other chapters and other legislation. We did a study of some of the other chapters and felt that if we are creating a new chapter 193 on persistently dangerous schools, we want to guarantee that school districts have the authorization to implement policies promoting school safety. It is simply a clarification and a reauthorization within this statute.

SENATOR BARNES: Thank you Senator.

SENATOR LARSEN: Thanks.

SENATOR O'HEARN: Thank you Mr. President. Senator Barnes, you are absolutely correct. Schools already have this opportunity to write policy. My concern with this amendment is that it is confusing because it talks of school safety. We already have a chapter in law that does speak to school safety and this particular chapter that we have in law is referencing persistently dangerous schools. It is a new chapter. I am not sure if this is confusing by using the word "school safety" rather than persistently dangerous schools. Thank you.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Estabrook.**

**The following Senators voted Yes: Below, Green, Flanders, Odell, Peterson, Foster, Larsen, Gatsas, Martel, Sapareto, D'Allesandro, Estabrook, Morse, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Roberge, O'Hearn, Clegg, Barnes, Prescott.**

**Yeas: 14 - Nays: 9**

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 116**, establishing a committee to study methods to prevent or reduce the high school dropout rate. Education Committee. Ought to pass, Vote 3-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you Mr. President. I move SB 116 ought to pass. Education is a foundation that is a necessity in today's world. This issue is such a critical one that it requires a careful in-depth look

as to why students are not finishing high school and what other states are doing to address this issue. The study committee could work in conjunction with the Department of Education's task force to gather pertinent information regarding dropouts. This study committee is necessary because there may be other factors outside of school that the Department of Education may not be attentive towards. The Education Committee asks for your support for the motion of ought to pass. Thank you Mr. President.

**SENATOR BOYCE:** Senator Johnson, last week or the week before we passed and sent on to Finance, a bill, SB 55 I believe, which would have raised the age that students could drop out to age 18. This is a committee to study why kids are dropping out. Weren't we kind of putting the cart before the horse by sending that bill out first, and now we are going to study it? Shouldn't we have studied first and found out why they are dropping out before we had that bill?

**SENATOR JOHNSON:** In your mind, that may be true. Right now I am just addressing SB 116.

**SENATOR BOYCE:** Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 136**, relative to liability for hazardous materials accidents. Environment Committee. Ought to pass, Vote 5-0. Senator Prescott for the committee.

**SENATOR PRESCOTT:** Thank you Mr. President. I move ought to pass on SB 136. It was a unanimous recommendation in the Environment Committee. It occurred in the district that...near my district, that a truck carrying hazardous materials overturned within the city limits of Brentwood and a hazardous team was addressed to come out to see the issue. When they arrived, they found that there was not a hazardous spill, however, they were stuck with the bill of having to respond to a potential hazardous spill. So this bill will remedy that situation, where the insurance carrier will pay for the group to come out to the site, whether there is an actual hazardous spill or not. Thank you very much Mr. President.

**Adopted.**

**Ordered to third reading.**

**SCR 4**, urging the New Hampshire congressional delegation to take appropriate action against modification of the Clean Air act if the result jeopardizes New Hampshire's ability to safeguard public health and protect environmental quality. Environment Committee. Ought to pass, Vote 5-0. Senator Below for the committee.

**SENATOR BELOW:** Thank you Mr. President. I move that SCR 4 ought to pass as was unanimously recommended by the Environment Committee. This resolution received bipartisan support in committee, because it involves an issue on which all of us should be able to agree – our state's clean air. As you know, the President's administration has moved to relax certain regulations under the Clean Air Act. Relaxing these standards could be very detrimental to our state. The Department of Environmental Services testified in support of the resolution that relaxing federal guidelines could negatively impact our state's air, due to pollution emissions transporting into New Hampshire from upwind states. It is impor-

tant to note that our congressional delegation in Washington also supports efforts to maintain stringent source review standards for air pollution emissions. Senators Gregg and Sununu, as well as Congressman Bass, all sent letters to the committee indicating their support for measures that comply with the intent of this resolution. Considering these facts, I believe this resolution should receive the support of the full Senate. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 361-L**, permitting municipalities to form regional water districts. Environment Committee. Ought to pass with amendment, Vote 4-1. Senator Cohen for the committee.

**Environment**

**April 2, 2003**

**2003-1096s**

**08/09**

### **Amendment to HB 361-LOCAL**

Amend RSA 362:4, VI as inserted by section 12 of the bill by replacing it with the following:

VI.(a) For purposes of this chapter, a municipal corporation shall include a regional water district.

(b) During the initial 4 years of its operation, if a regional water district seeks to alter rates other than in a manner that uniformly impacts all customers within the district, any municipality that is a member of the regional water district may seek commission review of the proposed rate change. In order for the proposed rate change to take effect, the commission must determine that the proposed rates are cost-based and that they are not unduly discriminatory.

(c) A regional water district shall adopt and enforce quality of water service standards consistent with the commission's administrative rules.

(d) With respect to regional water districts, the 15 percent benchmark employed in this section shall be calculated in relation to an average of the regional water district's relevant rates as determined by the public utilities commission.

SENATOR COHEN: Thank you Mr. President. I move that HB 361 ought to pass with amendment as recommended by the Senate Environment Committee. This bill is a simple piece of enabling legislation, which will allow communities throughout the state to form regional water districts enabling them to work together to manage their own future. Although the bill was initiated as a result of the Pennichuck situation in Nashua, it actually relates to any community across New Hampshire, any communities that wish to form smaller regional districts for water supply and distribution. We had some initial concerns over smaller districts for water supply and distribution, enabling the districts to obtain municipal bonding. The committee amended the bill to ensure that in the unlikely event that any customers, in smaller towns, affected by unusually higher rates than the rest of the district, will be allowed to appeal to the Public Utilities Commission. Additionally, the PUC must review all rate increases to ensure that any increase is justified. The committee believes these measures provide ample security to all towns throughout the water district and provide long-term, public benefit. The committee supports passage of this bill as ought to pass with amendment. Thank you Mr. President.

SENATOR PRESCOTT: Thank you Mr. President. I would like to stand up in favor of the merits of this bill. There was one question in committee that was not answered, so my committee vote was against the bill. I am changing my vote because the answer to my question is that the regional water districts, when formed, do not have powers of eminent domain. That was my question, to make sure that didn't happen. Thank you very much Mr. President. I will be voting in favor of the bill.

SENATOR O'HEARN: Thank you Mr. President. I would like to thank the Environment Committee on this particular piece of legislation. It is most important to the southern tier. There are 22 towns involved in this. They are working together on this and moving forward to bring this before the PUC. Water is one of our most important natural resources in this state and this is just one way that we are looking at protecting our water. I want to thank the Environment Committee for all of their work. Thank you.

SENATOR GATSAS: Thank you. Senator Cohen, the piece of legislation that we passed last year that put a ceiling on the amount that a water company could charge customers was 15 percent without having to go to the PUC for jurisdiction of that. Does that apply to this legislation?

SENATOR COHEN: I believe that it would.

SENATOR BOYCE: Senator Cohen, I was just reading through this on page two, lines 7 through 14 in particular is what I am looking at, but this appears to amend a section that deals with a municipality issuing bonds. Now it adds in there the regional water district, but it also takes out a two-thirds vote requirement. Am I correct in seeing that this is saying that any municipality can now issue bonds for any purpose under this, not just regional water districts, with a simple majority vote? Is that what this is doing?

SENATOR COHEN: I believe that on the next line it refers to regional water districts. I am not sure if that answers your question.

SENATOR BOYCE: But this section of the RSA 33-B:2 is issuance of revenue bonds and pertains to municipalities in general, not just regional water districts, and we are striking the two-thirds vote requirement to issue bonds.

SENATOR COHEN: Certainly this was intended to enable the regional district to be able to participate and get municipal bonds. I am just looking at this here. I believe that this would apply to this particular situation.

SENATOR BOYCE: I would respectfully have to disagree with you on that.

SENATOR COHEN: Thank you.

SENATOR O'HEARN: Hopefully I can answer this question. This is enabling legislation and it is for the purpose of the regional water district. Regional water districts cannot issue bonds. With this legislation, the regional water district can. The charter will allow the move of the districts involved in this charter to set up their own amounts of votes needed to issue the bond.

**Recess.**

**Out of recess.**

### **MOTION TO TABLE**

Senator Boyce moved to have **HB 361-L** laid on the table.

**Adopted.**

**LAIID ON THE TABLE**

**HB 361-L**, permitting municipalities to form regional water districts.

**Senator Foster Rule #42 on HB 361-L.**

**HB 166**, relative to employees of the New Hampshire retirement system. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Prescott for the committee.

SENATOR PRESCOTT: Thank you Mr. President. This is a 4-0 vote out of ED & A. It will resolve a conflict between RSA 100 which gives the Board of Trustees of the New Hampshire Retirement System, the power to hire and compensate classified employees, and RSA 273, which grants the authority for collective bargaining with classified state employees exclusively to the executive branch of government. The New Hampshire Retirement System, an independent employee benefit trust, has been independent of the executive branch since the mid 1980's. House Bill 166 confirms the trustees authority to sign off on the collective bargaining agreement and clarifies the fact that Retirement System employees are similar to legislative employees, employees of the court system or employees of the Pease Development Authority. The committee unanimously recommends the ought to pass motion. Thank you Mr. President.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 223**, relative to the temporary removal of inmates. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Prescott for the committee.

SENATOR PRESCOTT: Thank you Mr. President. Another 4-0 out of committee. There are regular occasions where inmates are temporarily removed from a correctional facility for medical treatment or for a court appearance. Current law requires corrections officials to request a court order when an inmate will be temporarily removed for longer than 24 hours in the case of a medical issue and 12 hours for a court appearance. About 150 court orders were requested for medical reasons last year alone. This is a time consuming process and ultimately none of the requests are ever denied by the court. This bill, HB 223, would exempt corrections officials from filing this report to the court except when a prisoner will not be in the custody of correctional personnel. In practice, inmates are never ever left alone by correctional personnel, whether in court or at a medical facility. They are in jail you know. The committee unanimously recommends ought to pass. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 263**, establishing an oversight committee to review the allocation of funds disbursed for the developmental disabilities waitlist. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Prescott for the committee.

SENATOR PRESCOTT: Thank you Mr. President. I move ought to pass on HB 263. After meeting since 1998, the Developmental Disabilities Waitlist Oversight Committee was sunsetted last year. Oversight is vital to ensure the Department of Health and Human Services accommodates the waitlist and when necessary, recommends changes. There is currently one lawsuit relative to the disabled list working its way through the court system, and legislation was passed in 2000 that would bring



the waitlist down to a 90 day period within five years. The issue is an ongoing concern in many respects and the Oversight Committee is much needed. The committee would continue to meet a minimum of four times every year and the leadership of the committee will also continue to change back and forth, between the respective chairs of the Senate and House of Representatives, Health and Human Services Committee. The committee unanimously recommends ought to pass on HB 263. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

### **MOTION TO REMOVE FROM THE TABLE**

Senator Flanders moved to have **SB 101-FN**, relative to unemployment compensation taken off the table.

**Adopted.**

**SB 101-FN**, relative to unemployment compensation.

SENATOR FLANDERS: I am here to answer Senator Gatsas' question. Unfortunately, I had notes, but I think that my notes got tangled up with the papers and stuff that I received on 119 and I have lost it. Basically your questions as I remember on the amendment was why some of these other countries were listed as places where we would send unemployment compensation. The reason is it is federal document, it is federal money and it has to be in there because of federal monies going out through. I also checked, at your request, we have not sent any money out to those countries and we are not presently sending any. None go out and none are going out.

SENATOR GATSAS: Thank you.

**Question is on the adoption of the committee amendment (0922).**

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

SENATOR BARNES (RULE #44): Thank you Mr. President. Today is a very important day for the state of New Hampshire. As you all know, the University of New Hampshire's fine hockey team is in the frozen four and are going to be on national television at noontime. Let's see, this one is for you Senator Green. I would like you to put that on because we are going to sing a little ditty up here.

SENATOR GREEN: Ditty? What is a ditty?

SENATOR BARNES (RULE #44): This one is for Senator Gatsas.

SENATOR EATON (In the Chair): Senator Barnes are these UNH graduates?

SENATOR BARNES: Yes sir. If you gentlemen will please join me up front.

SENATOR GREEN: These aren't big enough Senator Barnes.

SENATOR GATSAS: Senator D'Allesandro, did you get mine?

SENATOR D'ALLESANDRO: I just got a large, Teddy.

SENATOR GATSAS: Yes, but guess what?

SENATOR D'ALLESANDRO: This will never fit you Teddy.

SENATOR GATSAS: Senator, it won't fit you either.

SENATOR CLEGG: Don't put it in the drier it will shrink.

SENATOR BARNES: I am going to give you all a little geography lesson. The hate Cornell Red Men are from South Central New York, and there is a river that runs through **TAPE INAUDIBLE**. Okay. Geography lesson. The Cayhuga river flows through Ithaca, New York, and I went to school in that area and we used to play there, baseball and football. We had a ditty that we used to sing going to and from Ithaca, New York. And it goes this way: "High above Cayhuga's waters, there is an awful smell. Some say it is Cayhugas waters, I say Cornell." Today UNH is going to make history and we are going to go to the championship for the first time. So today is the first step. We are going to whip Cornell's pride. We are going to wipe the Ivy League, excuse me Senator Peterson, they don't stand a chance.

SENATOR JOHNSON: I hope they don't end up like the Red Sox.

SENATOR BARNES: Senator Johnson, you have a couple of bills coming up later, I would be careful of what you say.

SENATOR GATSAS: Senator Barnes, wouldn't it be appropriate that some day, that we could be wearing baseball shirts showing that UNH would be going to the finals in the World Series?

SENATOR BARNES: I like your thinking. I understand that there are a couple of Senators that are working on it as we talk, Senator Gatsas. That might be an opportunity for this Chamber to be able to have in real life for all of us from UNH. Mr. President, I appreciate the indulgence, but this is a huge day for the state of New Hampshire. I wanted these fine gentlemen to be part of it.

SENATOR MARTEL: Thank you very much Mr. President. I, too, wish the Wildcats all the luck in the world because I really love that hockey team. I do take offense though, at Senator Barnes attack on Cornell University. I had the privilege of attending Cornell while I was working for Digital Equipment Corporation. It is a fine university. I do hope they lose today because my heart's at UNH. But those people that live in Ithaca really get a bad rap sometimes.

SENATOR BARNES: The river does smell.

SENATOR MARTEL: It does. I agree, it does smell.

**HB 321**, relative to ordinary and accidental death benefits in the city of Manchester employees contributory retirement system. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Prescott for the committee.

SENATOR PRESCOTT: Thank you Mr. President. We move ought to pass out of ED and A. The Manchester Retirement System is required by law, to request changes to its benefits through the legislature before the issue can be placed on the Manchester referendum ballot for the voters to decide. Currently the Manchester Retirement System offers little benefits to its members in the case of accidental death. First, the member has to be retirement eligible. If not retirement eligible, then the money that was invested, is simply returned with interest. House Bill 321 will make Manchester's benefits similar to the benefits received by group I employ-

ees in the state Retirement System, including an annual pension for a spouse or if not married, any children under 18. Other than the terms of vesting, which are ten years for state employees and five years for Manchester employees, the language is almost identical. House Bill 321 is endorsed by the mayor, aldermen, and the city's fiscal officials. The committee unanimously recommends ought to pass. Thank you very much Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 54-FN-L**, relative to the local inventory of property values for assessment of property taxes. Finance Committee. Ought to pass with amendment, Vote 6-0. Senator Boyce for the committee.

**Senate Finance**

**April 2, 2003**

**2003-1099s**

**01/04**

**Amendment to SB 54-FN-LOCAL**

Amend RSA 74:1 as inserted by section 3 of the bill by replacing it with the following:

74:1 Annual List. The selectmen of each town shall annually, in April, make a list of ~~[all the polls]~~ ***the total assessed property value***, and ***shall*** take an inventory of all the estate liable to be taxed in such town on the first day of that month.

SENATOR BOYCE: Thank you Mr. President. I move SB 54 ought to pass with amendment. This bill clarifies current statute relative to the inventory of property values for the assessment of property taxes. This bill will require tax officials to assess and collect property taxes on property values as of April 1. The committee amendment clarifies the wording of the annual list as is required by the selectmen in each town. Please join me by voting ought to pass with amendment. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 55-FN**, raising the age at which a child may terminate his or her public education. Finance Committee. Inexpedient to Legislate, Vote 4-3. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move that SB 55 be inexpedient to legislate. We can all agree that it is extremely important for children to receive a proper education. This bill requires that students stay in school against their will. This is a very expensive piece of legislation that increases education trust fund expenditures by over \$2.5 million. Please join me in supporting the committee recommendation of inexpedient to legislate. Thank you.

SENATOR BELOW: I rise in opposition to the report of inexpedient to legislate. If the body were to turn that down, I would offer a floor amendment that I think would be well considered because it would preserve the status quo for home schoolers who have been concerned about this bill, in really all respects. It would also address the concerns of conflicting statutory language that Senator O'Hearn has raised. Also clarify

some other things that are not clear in the statute now, and really enable parents to be the ones who have the say over whether their kids withdraw from school at age 16 and 17 or not.

SENATOR O'HEARN: Thank you Mr. President. I also rise in ask that we turn down the motion of inexpedient to legislate. Public schools in New Hampshire have 2,500 kids dropping out every year. That is still alarming, especially in a state like New Hampshire. I still believe that we are leaving our children behind. This is a loss of productivity to the state. A loss of wages and a loss of an educated work force. What we have been working for in this state is to produce a highly educated work force and doing inexpedient to legislate on a piece of legislation like this is not appropriate for the direction that New Hampshire is going. I ask you to turn down the inexpedient to legislate motion and let us move ought to pass as amended.

SENATOR LARSEN: Senator O'Hearn, I understand that there were some concerns with the original bill but I also understand that you and Senator Below have a floor amendment which clarifies the results of this bill on those children who are receiving home education, and in fact, clarifies that a home schooled child could in fact, would not in fact, be subject to the same requirements and that they would be exempted and it would clarify the home schoolers concerns? Am I correct in understanding that that is the purpose of the floor amendment so that if we vote to get to this floor amendment, we will in fact be supporting and correcting some of the problems?

SENATOR O'HEARN: That is correct. It was always the intent of the Education Committee to exempt the home schoolers from this particular piece of legislation, and also exempt those students that have obtained the credits or qualify with a high school diploma before reaching the age of 18.

SENATOR LARSEN: Thanks.

SENATOR PRESCOTT: Senator O'Hearn, in the circumstance where if this bill were to pass, in the circumstance where a student wishes to leave school after the age of 16, and the parent agrees with the student, will that be allowed?

SENATOR O'HEARN: Yes, the parent is called in for a conference. That is in law now. If the parent called in for a conference signs the student off, then the student will be allowed to drop out.

SENATOR PRESCOTT: Thank you very much.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. I just want to make a statement and see if it makes sense to anybody. About fifteen minutes ago we passed SB 116 establishing a committee to study methods to prevent or reduce the high school dropout rate. Aren't we getting the cart before the horse? Why don't we let the study committee study it and find out if this is something that should be done to help? We are trying to go two different paths. I think that we should let the study committee do their study and come back and find out if indeed this is something that might help. Thank you.

SENATOR O'HEARN: Thank you Mr. President. Just for clarification. The study committee was passed knowing that the Finance Committee inexpedient to legislated the bill, so that there would be at least something that we could do to help the dropout rate.

SENATOR CLEGG: Senator O'Hearn, would you believe that I would have voted for the study bill regardless of what happened to this bill?

SENATOR O'HEARN: I would believe that and I hope that you will serve on it.

SENATOR CLEGG: Thank you.

SENATOR GREEN: I would rise in support of the committee report of inexpedient to legislate. I wrestled with this issue for some time, even when it was before the Education Committee. There were many issues that they have tried to address in amendments, and none of the amendments, so far, and I haven't seen the current one that is being supposedly offered if we do not support the committee report; however, the financial issue of it, as it stands, and I don't know whether...it is pretty hard to vote blindly, in terms of not knowing what the amendment is, but I just know that there is a significant amount of money involved in this trust fund that creates a major problem for me in terms of trying to figure out a way to fund education as we are currently funding it. It also creates a problem for me on the policy side. Many of us have had certain experiences in our life. One of my experiences was as a school teacher and as a principal of a school. I want you to know from my point of view, that you don't keep children in school if they don't want to be there. The older they get, the more difficult it is. I speak for the children who are in those classrooms who want to learn, who don't want the disruptions, do not want to cope with that kind of an issue. I think that we have to take care of those children who do not want to be in the public school education system. Our approach has always been alternative education, and a way in which to deal with that issue. I don't think that passing a law which requires people beyond age 16 to stay in school by law, to make it a legal issue for the parents, is the way to solve the problem. The way to solve the problem is do what is educationally sound, provide them with another alternative of that environment which they find themselves in is just not possible for them to succeed. Not only do they not succeed, they create major problems for the children who are there who want to succeed and they disrupt the classrooms. I just think that you are going down the wrong path in trying to do it this way. This bill, as it stands, from day one, and all of the amendments that I have seen, has not changed any of that, and you still have a major financial commitment if you go along and not support the committee's recommendation of inexpedient to legislate. Thank you.

### PARLIAMENTARY INQUIRY

SENATOR BELOW: Mr. President. I have a parliamentary inquiry. If the inexpedient to legislate report were to be adopted, and the study committee became law and looked at this issue, and wanted to recommend similar legislation in the next session, would be precluded from considering that legislation if it was essentially the same as what we inexpedient to legislate this year?

SENATOR EATON (In the Chair): Yes you would.

SENATOR BELOW: Yes we would. So further inquiry. If we wanted the study committee to look at this, would we be well advised or would an option be to refer this to committee instead of killing it at this time? Would that be an option?

SENATOR EATON (In the Chair): That would be one option, and tabling would be another option.

SENATOR BELOW: Thank you.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise in opposition to the inexpedient to legislate motion. Like Senator Green, who I have the greatest of respect for, I, too, was a teacher and an educator. I agree with him in this respect: That when someone doesn't want to be someplace, they can be a problem. As a teacher in the classroom, you have to deal with that problem and it is quite difficult. There is no question about that. But let me give you a couple of personal experiences as a teacher in Manchester at Bishop Bradley High School and as a teacher at Kennett High School in Conway. One of the real challenges that I had was telling a 16-year-old that it really wasn't the best thing to drop out, that you should finish your education because in the long run, it is going to make you more viable in terms of the job market. Now many of these youngsters had great pressure from their parents to go out and to get a job because they needed another breadwinner in the family, particular in Manchester, where at that time, we had shoe factories that really demanded manual labor. We had the textile industry. Some of you remember the Waumbec Mill that was in downtown Manchester. They needed people and young people were pushed in that direction. When you looked at the census figures, in the 1940 census, Manchester had a 30 percent high school graduation rate. In the 1980 census we had a 60 percent high school graduation rate. It is up to about 70 percent now or a little higher, so there has been a better situation as far as the graduation rate is concerned. I think that you can correlate that with the disappearance of the manual labor jobs that youngsters went right into, we went from manufacturing, the Amoskeag Mill, to the shoe factory, to the textiles, to the components industry. But anything that gives that youngster another opportunity to stay, I think that it is essential. As a teacher, as a coach, and as a parent, you want your kid to do the best that they can. A way to do that is to convince that youngster to stay in school. This provides another opportunity. I don't think that we can let that go by the boards. There isn't anyone in this Senate Chamber that isn't concerned with the dropout rate. The dropout rate is something that we talk about all of the time. The relatively high dropout rate that we have in this state. This is a way to work with parents. A way to work with teachers and to work with administrators, to prevent people from leaving. I think that anytime that you save one kid, you have really gone a long way. It is something that we have to look at. I think that we have to look at very, very seriously and when we look at the big picture, the big picture says without the education you are not going to make it in society today. You are not going to have that chance, so every opportunity that we can give to provide that, I think, is a plus for us. Thank you Mr. President.

SENATOR O'HEARN: Thank you Mr. President. Senator D'Allesandro, this body has already discussed the dropout rate and has already passed it on policy. So we have a positive vote on that. The question really here today is the \$2.5 million in the year 2007. Is it worth \$2.5 million to keep these kids in school?

SENATOR D'ALLESANDRO: Yes, absolutely. Absolutely.

SENATOR ESTABROOK: Thank you Mr. President. Senator O'Hearn, I appreciate your focusing on the finance given; that is what we should be discussing, but given there has been discussion and confusion about the bill, isn't it true that the bill takes current law, which has a process that is in place for a child 16 or under who wants to leave school and simply extends that process to a child under 18 years of age so that it

doesn't prevent them from dropping out, it simply puts into place a process by which they speak with relevant adults and try to see what their options may be before they make that final decision. Is that true?

SENATOR O'HEARN: That is correct. The process is in place and we are changing the age to under 18 in order to keep that process going.

SENATOR ESTABROOK: Thank you.

SENATOR CLEGG: Senator O'Hearn, are you saying that if we didn't vote this inexpedient to legislate that it would require parental notification and approval before someone under 18 could leave school?

SENATOR O'HEARN: That is what is in the law now for those 16 and under.

SENATOR CLEGG: Thank you, I will remind you when the parental notification bill comes in.

SENATOR BELOW: Thank you Mr. President. Actually to clarify that this part of the problem, the law is sort of contradictory. There is actually a provision in law now that says a 16 and 17-year-old who wants to drop out is supposed to only do so after conferring with the principal and the principal conferring with the parent and the parent signing off on that. That is the law now. This just seeks to clarify it and align the parental duty to send their child to school with that. Nothing in the floor amendment that Senator O'Hearn and I would offer, would force a child to go to school at age 16 or 17 if the school and the parent don't want them there. Both the school and the parent would have the option of keeping the kid out if they were either too disruptive or simply the parent and the child said that we don't want them to go to school. It would just make it so that the kids don't unilaterally make that decision on their own without their parents okay. I would just urge the defeat of the inexpedient to legislate motion. If you are not sure that you want to pass it at this point, it would still be better to vote down inexpedient to legislate. If the amendment and the ought to pass doesn't pass, then I think that we could all support referral so that the study committee wouldn't be precluded from the options that were embodied in this bill. Thank you.

**Question is on the committee report of inexpedient to legislate.**

**Recess.**

**Out of recess.**

**Question is on the committee report of inexpedient to legislate.**

**A roll call was requested by Senator Peterson.**

**Seconded by Senator O'Hearn.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Roberge, Peterson, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**The following Senators voted No: Below, Odell, O'Hearn, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 15 - Nays: 8**

**Committee report of inexpedient to legislate is adopted.**

**SB 58-FN-A, relative to the net operating loss under the business profits tax. Finance Committee. Inexpedient to Legislate, Vote 4-3. Senator D'Allesandro for the committee.**

SENATOR D'ALLESANDRO: Thank you Mr. President. I would hope that my colleagues would vote no on inexpedient to legislate as we have an amendment to be offered by Senator Foster that has been accepted by the members of the Finance Committee, having to do with the cost of this piece of legislation and when this piece of legislation would take effect. That was not available at the time of the hearing. We waited for an amendment but that amendment was not forthcoming at the time. That amendment is now ready and I believe that we should vote the inexpedient to legislate down and accept the amendment. Thank you Mr. President.

SENATOR GREEN: I would like to rise in support of not passing the recommendation of the committee and support Senate D'Allesandro's request. My desire to do this is to look at the amendment. We dealt with this amendment on the basis of the amount of money that was in it. My understanding is the new amendment changes that amount substantially and that may make a difference on how the committee may have acted on this particular recommendation. I would ask that we vote down the inexpedient to legislate. Thank you.

**Motion failed.**

**Senator Below moved ought to pass.**

Senator Foster offered a floor amendment.

Sen. Foster, Dist. 13

**April 8, 2003**  
**2003-1201s**  
**08/09**

### **Floor Amendment to SB 58-FN-A**

Amend the bill by replacing all after the enacting clause with the following:

1 Business Profits Tax; Net Operating Loss; Requirement to Carry-Back Losses Eliminated. Amend RSA 77-A:4, XIII to read as follows:

XIII. A deduction *from taxable business profits* for the amount of the net operating loss carryover determined under section 172 of the United States Internal Revenue Code [~~in effect on December 31, 1996 provided, however, that in calculating such net operating loss carryover, the election permitted under section 172(b)(3) of the United States Internal Revenue Code in effect on December 31, 1996, shall not be allowed~~]. A net operating loss shall be apportioned in the year incurred according to RSA 77-A:3. Net operating losses may only be carried forward for the 10 years following the loss year. For taxable periods ending:

(a) On or before June 30, 2003, the amount of net operating loss generated in a tax year that may be carried forward may not exceed \$250,000.

(b) On or after July 1, 2003 and on or before June 30, 2004, the amount of net operating loss generated in a tax year that may be carried forward may not exceed \$500,000.

(c) On or after July 1, 2004 and on or before June 30, 2005, the amount of net operating loss generated in a tax year that may be carried forward may not exceed \$750,000.

(d) On or after July 1, 2005, the amount of net operating loss generated in a tax year that may be carried forward may not exceed \$1,000,000.

In the case of a business organization not qualifying for treatment as a subchapter C corporation under the United States Internal Revenue



Code, such deduction shall be the amount that would be determined under section 172 of the United States Internal Revenue Code in effect on December 31, 1996 if the business organization were a subchapter C corporation and as limited by this section. A deduction for the amount of the net operating loss carryover shall be limited to losses incurred on or after July 1, 1997.

2 Revenue Rule Rescinded. The department of revenue administration's rule Rev 303.03 shall be rescinded and the commissioner of the department of revenue administration shall adopt new rules consistent with this chapter.

3 Effective Date. This act shall take effect July 1, 2005 for taxable periods ending on or after July 1, 2005.

**2003-1201s**

### AMENDED ANALYSIS

This bill eliminates the requirement to carryback losses for net operating loss under the business profits tax.

SENATOR FOSTER: Thank you Mr. President. I have a floor amendment that I would like to offer. This bill does two things, it recognizes that **TAPE INAUDIBLE** the policy behind this legislation is to even out tax burdens by businesses recognizing that when they make or lose money it can be somewhat gratuitous and at least partially driven by economic cycles. If you lose \$1 million in one year and make \$1 million in the next year, should the full \$1 million of profit in the second year generate tax? Our existing policy really says no. That you can use net operating losses from year to year to offset gains and losses. Despite that policy, however, our law as it currently exists, has been interpreted by the Department of Revenue Administration to do two things which undermine this policy. The bill as introduced, not as it is being amended here, the first of those is double apportionment. I will not attempt to try and explain that here, it is fairly complicated, but suffice it to say that the multistate businesses that dramatically dilutes losses, I would say unfairly, and some say unconstitutionally, driving up the taxable income. I would like to deal with that now, but because of the cost, it just can't be dealt with today. So the floor amendment that I passed out to you does away with that portion of the legislation, which had a high fiscal note. The second provision, which the amendment does intend to deal with, which changes existing law in a way, the law today, frankly, is somewhat bizarre to me, and I'd almost say somewhat embarrassing. I really couldn't believe it when I first learned about it. What the statute, as written today, requires every business to carry back their net operating losses to previous years and apply those against gains if they existed in previous years. The federal law actually gives you a choice. Some people do in fact carry back under federal law, so what is the problem? Under the federal law, the Internal Revenue Service lets the taxpayer go ahead and carry it back and then amend its return and get a refund if that is appropriate. The state law prohibits that. What it does is it makes you carry it back, but you can't amend your return, so poof, the NOL is gone. You never get to use it ever. It is a Catch-22. Some would refer it to this burning existing law as Phantom NOL losses. Another senator, I think, in the hearings, I heard it referred to as a case of "Heads I win - Tails you lose". I just call it really bad tax policy. Our businesses need help today, they are losing money now and we should not turn on the tax spigot as soon as they turn onto the profitability. It will stunt our growth and I think

our economy. The amendment that I have prepared places this change into law. What it merely does is to allow a taxpayer to carry forward their losses before they have to carry them back. Former Commissioner Arnold looked at it and agrees with me that is what it does. Mr. Blatsos has done that as well. A fiscal note has been passed to you that estimates the cost to be \$2 million per year, recognizing, however, the fiscal situation that we are in, the effective date of legislation is July 1, 2005. It won't affect the next biennium or the next. It goes into effect after that. I would appreciate your support for the amendment. I think that it is a good tax policy and will help out our businesses. Thank you.

SENATOR SAPARETO: Thank you Mr. President. Mr. President, I rise in support of this amendment. This state, in the past two years really hasn't been, in my opinion, as friendly to businesses as we should be. As the prime sponsor of the NOL bill last time, we tried to bring us up to par with the federal statutes in other states that allow states to or businesses here to write-off their expenses similar to other states. We don't have that and I think this is a step forward. The two issues that we came up with last year in the House Ways and Means regarding the apportionment, which Senator Foster describes as fairly complicated, but of course has a higher price tag, but I think that it is something that we absolutely are going to have to pay attention to and make a change in shortly. This particular bill, although only costing a couple of million, really just fixes an error, I think, in the intent of the NOL bill, which was to allow carry back. We don't allow them into return, so there's really a problem with that statute and we are making the right step with this. I think that in addition to the last two things that need to be corrected in the NOL bill, there are three things. This is the first one. The second one would be to correct the apportionment and the third, would eventually bring us up to the limits that the federal allows as well to bring us up to most states. I strongly urge my colleagues to support this because this is a step in the right direction, and the second bill that has been business-friendly that I have noticed, to businesses in the last four years, so I think that we really need to take a step in the right direction. I hope that you will support the amendment.

SENATOR BOYCE: Senator Sapareto, am I correct in my understanding of what this will actually do is that businesses that are losing money and then start to make a profit, will be able to use some of the money that they would otherwise have to pay as increase taxes to hire people, which will then put more people to work and therefore, may bring the economy back a little faster by having this, than if we didn't have this?

SENATOR SAPARETO: I think that is a distinct possibility. Thank you.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Sapareto.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Below, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Estabrook, Morse, Prescott, Cohen.**

**The following Senators voted No: None.**

**Yeas: 23 - Nays: 0**

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 63-FN-A-L**, relative to establishing community reinvestment areas and granting business tax credits for investments in community reinvestment area projects. Finance Committee. Ought to pass with amendment, Vote 4-2. Senator Odell for the committee.

**Senate Finance**

**April 2, 2003**

**2003-1107s**

**09/10**

### **Amendment to SB 63-FN-A-LOCAL**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to establishing community reinvestment and opportunity zones and granting business tax credits for investments in projects in such zones.

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose. The general court finds that establishment of community reinvestment and opportunity ("CROP") zones and tax incentives for CROP zone projects which are available to qualifying new and existing businesses in the state are effective ways to meet certain state economic objectives, such as stimulating economic redevelopment, expanding the industrial base, creating new jobs, reducing sprawl, and increasing tax revenue. Therefore, to further these economic objectives, the general court in this act authorizes the commissioner of resources and economic development to adopt rules relating to the establishment of CROP zones, providing for the designation of CROP zones, eligibility for projects within the CROP zones, tax incentives for such projects, reporting requirements, and other provisions as may be necessary for the establishment and operation of CROP zones.

2 New Chapters; CROP Zones. Amend RSA by inserting after chapter 162-M the following new chapter:

### **CHAPTER 162-N**

#### **COMMUNITY REINVESTMENT AND OPPORTUNITY ZONES**

**162-N:1 Definitions.** In this chapter:

I. Unless otherwise specified, "commissioner" means the commissioner of resources and economic development.

II. "Community reinvestment and opportunity zone" or "CROP zone" means a zone designated by the commissioner as a CROP zone in accordance with the provisions of this chapter.

**162-N:2 Designation of CROP Zone.**

I. CROP zone shall mean a zone with a single continuous boundary designated in accordance with the rules adopted under RSA 162-N:5, and certified by the commissioner as being a brownfields site as defined under RSA 147-F, or having at least 2 of the following characteristics:

(a) At least 30 percent of the commercial or industrial space in the zone is vacant or demolished and certification of the zone as a CROP zone would likely result in the reduction of the rate of vacant or demolished structures or the rate of tax delinquency in the zone.

(b) The population of the municipality or municipalities in which the zone is located or the census tracts comprising the zone, according to the most recent federal census, decreased by at least 8 percent during the preceding 20 years prior to the census.

(c) At least 51 percent of the residents of the zone have incomes of less than 80 percent of the median income of residents of the municipal corporation or municipal corporations in which the zone is located.

(d) The zone contains unused or underutilized industrial parks, or structures previously used for industrial, commercial, or retail purposes but currently not so used due to age, obsolescence, deterioration, relocation of the former occupant's operations, or cessation of operation resulting from unfavorable economic conditions either generally or in a specific economic sector.

II. CROP zones shall be designated by the commissioner only upon petition by the local governing body, as defined by RSA 672:6. The commissioner shall certify that the proposed zone meets the criteria required in paragraph I.

III. The commissioner is authorized to establish an advisory board for each CROP zone established under this chapter.

162-N:3 Eligibility Requirements For Business Tax Credits. No CROP zone credits shall be allowed to any taxpayer unless the taxpayer's project receives written certification from the commissioner that it will expand the commercial or industrial base of the state, will create new jobs in the state, and will meet at least one of the following criteria:

I. The project is the creation of a facility which is determined to the satisfaction of the commissioner to entail significant investment in real and/or personal property other than inventory at a location where the business has not previously operated.

II. The project will make expenditures to add buildings, machinery, equipment, or other materials, except inventory, to a facility that equal at least 50 percent of the market value of the facility prior to such expenditures, as determined for the purposes of local property taxation.

III. The project will make expenditures to alter or repair a facility that equal at least 50 percent of the market value of the facility prior to such expenditures, as determined for the purposes of local property taxation.

IV. The project will make expenditures to alter or repair a vacant facility equal to at least 20 percent of the market value of the facility prior to such expenditures, as determined for the purposes of local property taxation.

162-N:4 CROP Zone Tax Credits.

I. A taxpayer which establishes an eligible project in a CROP zone, as certified by the commissioner under RSA 162-N:3, shall be allowed a credit equal to 100 percent of the taxpayer's investment in that project. The credit shall be allowed against any of the following individually or in combination:

(a) Taxes imposed by RSA 77-A.

(b) Taxes imposed by RSA 77-E.

II. Where the project involves the remediation of an environmentally contaminated facility and the taxpayer will be expending at least 250 percent of the existing value of the facility on a new investment project including at least 20 percent investment in remediation activities, the credit allowed shall be equal to 150 percent of the taxpayer's investment in that project.

III. The credit or any unused portion thereof may be carried forward for no more than 5 succeeding years.

IV. For purposes of this section, "investment" shall not include any moneys furnished by any governmental entity.

V. The commissioner shall enter into a written agreement with each taxpayer which has been certified by the commissioner under this section. The agreement shall include such provisions as the commissioner determines to be in the public interest, including:

(a) Quality and quantity of jobs to be created.

(b) Duration of the taxpayer's commitments with respect to the CROP zone.

(c) Penalties in the event that the taxpayer fails to comply with the agreement. Such penalties shall include repayment by the taxpayer of sums equal to the value of some or all tax credits previously claimed by the taxpayer, depending on the degree of noncompliance.

(d) The amount of the taxpayer's investment in the project.

162-N:5 Rules. The commissioner of revenue administration shall adopt rules under RSA 541-A relative to documentation of the credits claimed under this chapter. The commissioner of the department of resources and economic development shall adopt rules, under RSA 541-A, relative to the administration and implementation of this chapter. The rules adopted by the commissioner of resources and economic development shall include provisions dealing with:

I. Establishment and certification of CROP zones.

II. Criteria for and approval of projects in CROP zones, including jobs per dollar thresholds.

III. Fees which the commissioner may charge to each applicant to cover the reasonable costs of the state's administration of the applicant's participation in the CROP zone.

162-N:6 Reports. The commissioner shall furnish a report annually to the governor, the senate president, and the speaker of the house which describes the results of the CROP zone program, and shall include any recommendations for further legislation regarding CROP zones.

3 New Paragraph; Business Profits Tax; CROP Zone Tax Credit. Amend RSA 77-A:5 by inserting after paragraph XI the following new paragraph:

XII. The CROP zone tax credit, as computed in RSA 162-N:3.

4 New Section; Business Enterprise Tax; CROP Zone Tax Credit. Amend RSA 77-E by inserting after section 3 the following new section:

77-E:3-a Credit. The CROP zone tax credit, as computed in RSA 162-N:3, shall be allowed against the tax due under this chapter.

5 Effective Date. This act shall take effect July 1, 2003.

**2003-1107s**

### AMENDED ANALYSIS

This bill establishes procedures for designation of community reinvestment and opportunity ("CROP") zones by the department of resources and economic development and grants the commissioner of resources and economic development rulemaking authority to develop and implement such procedures. The bill also establishes credits against the business profits tax and the business enterprise tax for investments CROP zones determined to be eligible by the commissioner of resources and economic development. The bill grants the commissioner of revenue administration the authority to adopt rules relative to the documentation of tax credits claimed.

SENATOR ODELL: Thank you Mr. President. I move SB 63 ought to pass with amendment. Senate Bill 63 will provide new opportunities for our towns and cities to attract new and expanding businesses to targeted

areas within our communities. The economic development strategies of the past have worked well for many communities of our state...especially those in the southeast quadrant of New Hampshire. We went down a road that drew investment facilities to our state, unfortunately, that older strategy of economic development did not work so well for western and northern New Hampshire. The road that led to prosperity in one region of the state simply didn't work well for the other regions of the state. Community reinvestment opportunity zones will be defined by individual towns and cities and approved and overseen by the Department of Resources and Economic Development. New and expanding businesses will receive encouragement by earning tax credits against their business enterprise and business profits taxes over a period of time. Tax credits against business profits and business enterprise taxes is not new policy for New Hampshire. We offer the same tax credits for example, through the Community Development Finance Authority. Please give the regions of the state with the greatest need for economic development a new tool to bring new investment and jobs to designated areas using proven strategies. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 78-FN**, establishing the New Hampshire health care information council. Finance Committee. Inexpedient to legislate, Vote 5-1. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. The Finance Committee recommended SB 78 inexpedient to legislate. I make that motion, however, I understand that there will be a move to overturn that motion in order to offer a floor amendment that is a compromise, so therefore, I will leave it at that. Thank you.

SENATOR O'HEARN: Thank you Mr. President. Senate Bill 78 is the healthcare information council to respond to the increasing data and information needs from the public and private health care professionals. It passed on the floor here and I understand the Senate Finance Committee rejected it due to the fiscal note. I am asking that you overturn the inexpedient to legislate, I have a floor amendment to offer which will remove any financial obligation to the state on this piece of legislation. I would ask that you vote no on inexpedient to legislate.

**Motion failed.**

Senator O'Hearn moved ought to pass.

Senator O'Hearn offered a floor amendment.

Sen. O'Hearn, Dist. 12

**April 8, 2003**

**2003-1210s**

**01/09**

#### **Floor Amendment to SB 78-FN**

Amend RSA 420-K:4, II(a) as inserted by section 1 of the bill by replacing it with the following:

(a) The commissioner, or designee, shall serve in an ex-officio capacity.

Amend RSA 420-K:4, III as inserted by section 1 of the bill by replacing it with the following:

III. The board of directors shall:

(a) Prepare a plan of operation for submission to the commissioner for approval.

(b) Fulfill the duties and responsibilities outlined in the plan of operation.

(c) Prepare an annual budget.

(d) Enter into a contract or memorandum of understanding for the compilation, storage and processing of data.

(e) Make the data available for analysis of data and the preparation of reports.

(f) Develop and disseminate health care cost and other information designed to assist businesses and consumers in purchasing health insurance, health care, and long-term care services.

(g) Prepare and make public summaries, compilations and reports based on the data.

(h) Work collaboratively with the department of health and human services to establish a standard format for the submission of claims data.

(i) Develop a fee schedule for providing technical assistance and access to the council's data and information.

(j) Design, operate, and maintain facilities for public and state researchers' use of health care data.

(k) Retain an executive director and other staff to the extent allowed by available revenues to administer the council's activities.

(l) Approve and submit an annual report of its activities to the governor, the legislative oversight committee, the commissioner of the department of health and human services, and the commissioner of the insurance department.

(m) Evaluate biennially the impact and effectiveness of the data collection, the information needs of consumers and businesses, and the relevance and usefulness of the information developed by the council.

Amend RSA 420-K:5, I as inserted by section 1 of the bill by replacing it with the following:

I. The board of directors of the council shall adopt a plan of operation that shall require the approval of the commissioner. The plan of operation shall include the following:

(a) A proposal for the development of a comprehensive information system;

(b) A description of the data sets that the council intends to include in its comprehensive health care information system;

(c) A description of the criteria that the council intends to use to determine the data included in the public use data sets;

(d) The council's procedures for handling and accounting for funds;

(e) The council's requirements for keeping financial and other records of its activities;

(f) The procedures that the council intends to use to establish and maintain public awareness of the council and the data and information available; and

(g) The regular times and places for meetings of the board.

Amend RSA 420-K:7, II as inserted by section 1 of the bill by replacing it with the following:

II. The council shall enter into a memorandum of understanding with the department of health and human services for services necessary to carry out the data collection, analysis, processing and storage activities

and reporting activities required under this chapter. The memorandum of understanding shall require that the department annually collect the hospital discharge data, Medicaid, and claims data, and obtain the Medicare data set for New Hampshire. The department shall provide each of these data sets on a timely basis to the council. The data sets provided to the council shall not include patient names, street addresses, e-mail addresses, telephone numbers, or social security numbers.

Amend RSA 420-K:8 as inserted by section 1 of the bill by inserting after paragraph IV the following new paragraph:

V. The council shall pursue available funding opportunities, including grants, to fund its operations. The department of health and human services shall provide assistance to the council in obtaining grants and other funds.

Amend RSA 420-K:9, I as inserted by section 1 of the bill by replacing it with the following:

I. The council may retain an executive director, other staff, and professional consultants as necessary to perform its functions.

Amend RSA 420-K:10 as inserted by section 1 of the bill by replacing it with the following:

420-K:10 Funding.

I. The council shall establish an annual budget by July 1 of each year, and all revenues from fees and other funding sources shall be used to defray the costs incurred by the council.

II. The council may charge reasonable fees for duplicating, mailing, producing, and publishing information and data.

SENATOR O'HEARN: The purpose of the floor amendment is to remove any of the financial obligations on this. We recognized that information collection analysis and access will identify what works and what does not work. The purpose of the amendment, 1210s is to remove any of the state's financial obligations. Both the Department of Insurance and Health and Human Services Department are willing to work this piece through as the Health and Human Services already collects the data. They are working to access grants and Medicaid funds in order for this to move forward. I ask that this amendment be passed. Thank you.

SENATOR BARNES: Thank you Mr. President. Senator O'Hearn, looking at this quickly, I don't see a fiscal note under the amendment? Did I miss it?

SENATOR O'HEARN: There is no fiscal note. The purpose of the amendment is to remove the financial obligations of the original bill.

SENATOR BARNES: Oh, thank you very much. There is no fiscal obligation?

SENATOR O'HEARN: That is correct.

SENATOR BARNES: Thank you.

SENATOR BOYCE: Having read through this very quickly, I believe that it does address the concerns that the Finance Committee did have. The problems with the original bill, as we received it in Finance, were that it was going to require the hospitals and the ambulatory surgical centers and so forth, to contribute money to this function. The result of that would be that health care costs across the state would go up, and the state's expense for health insurance would go up because of that. That was...it was going to increase everybody in the state's healthcare costs



because of that. I believe that the way that this is written, it does not require that kind of funding and because of that, there probably...I don't believe there would be a general funding increase on this. I am very happy with this, and I think the Finance Committee is as well.

SENATOR GATSAS: Senator Boyce, I read in here that "the council shall establish an annual budget". Isn't it unusual that we, as a legislature, are talking about the description and the formation of a nonprofit entity and how they are going to be governed, and that we are establishing and saying that the "revenues and fees and other funding sources". What are those other funding sources and fees that we are allowing them to charge without having any clear understanding of what they may be?

SENATOR BOYCE: I believe that we have often-times created nonprofit corporations which are created by the state and then are run independently once we have done that. I don't think that is really much different. We are giving them the opportunity to seek out funding sources. It is not exactly clear, exactly what all of those will be, but it says that they will pursue the funding opportunities, grants and other funds. I don't...the original bill did specifically say that they were going to receive money from particular entities and that those costs would be passed on to the consumers.

SENATOR GATSAS: But isn't it vague enough that we don't know what we are allowing them to charge for fees? We are just giving them an open book to charge whatever fees they want to whomever they want?

SENATOR BOYCE: I have missed the spot where it talks about fees.

SENATOR GATSAS: On page three. It says that the "council shall establish an annual budget by July 1 of each year and all revenues from fees and other funding sources, shall be used to defray the costs incurred by the council."

SENATOR BOYCE: Oh, okay. In the other place that it mentions fees is the next line which says that they "may charge reasonable fees for duplicating, mailing, producing and publishing the data." I don't believe it gives them any other opportunities to assess fees. That is my understanding.

SENATOR D'ALLESANDRO: Senator O'Hearn, I look at this amendment and I see a situation where we are saying to the Department of Health and Human Services, that they should provide assistance to this council in obtaining grants and other funds. We are mandating that a state agency be the implementor of the grant writing and the grant taking process. There has to be an expense there because the time and effort of people in Health and Human Services in obtaining these grants and other funds, is a cost item. I guess my question is: have we done that with other not for profits? Where we mandate that the state be helpful in providing, not only, but mandating that the state provide assistance in obtaining grants and other funds? It is on line 30. Actually it starts on 29, V, 29-31. We are mandating that the state be a participant in assisting the council to obtain grants and other funds?

SENATOR O'HEARN: The information that I have from the Department of Insurance is that for the collection of data and the implementing of this type of service, there is a ten to one match on Medicaid dollars on this particular fund and that the Department of Health and Human Services is willing to seek out the funds from within their departments to make...to

get that ten to one match in Medicaid dollars. There are also possible grants that are available that they are seeking out. Their conversation with me indicated that this would... if it costs money, that this would not take place, this would not be able to bring this council forward.

SENATOR D'ALLESANDRO: But in this piece of legislation, we are mandating that the Department of Health and Human Services provide assistance to the council in obtaining grants and other funds. That is a mandate. We are saying to them, "you will do this." "Shall" is mandatory in terms of legislation.

SENATOR O'HEARN: This is an agreement between both departments to do this.

SENATOR D'ALLESANDRO: Thank you.

SENATOR LARSEN: I rise to question the need for this bill and even with its floor amendment. I share Senator D'Allesandro's concern that although I see a good faith effort to try to eliminate a cost for the state, there is real concern...we say that the Department of Health and Human Services has to work cooperatively with this council. We see on page two, that the "Department of Health and Human Services shall provide data sets on a timely basis to the council." We are having the department, and again on line 30 on page two, "the Department shall provide assistance to the council in obtaining grants." We are mandating to the department that they provide first class service to a nonprofit council that demands data. I think that there has to be a fiscal effect to this. Because I have not been involved in the discussion on this, I have yet to hear the reason for our creating this council in such a rush. I think that we need to put a little slower skids on this and have more discussion on exactly what this council is and what benefit it serves and at what costs it will be to the state in the collection of all of this data and provision of this data to a nonprofit council.

SENATOR O'HEARN: Senator Larsen, isn't it true that we have already passed policy on this and that the only issue before us right now is cost?

SENATOR LARSEN: And that is why I raise questions of costs. You can see that we are requiring the department to provide staff and time to submit data on a timely basis to this nonprofit council and that concerns me. I allowed Finance to look at this. We didn't have a full discussion on the council as it went to Finance because I assumed that there would be some of these issues coming before us. But even when it went to Finance there was concern for the policy of it. The combination of that makes me think that we need to slow it down a bit and have more discussions on it.

SENATOR O'HEARN: Thank you Mr. President. As we move forward with this and having sat on the CON task force, the information that we have needed on medical data was held within Health and Human Services. That information was not available to anyone. And no decision could be made on that CON task force because that information was withheld from all of us. What this is doing, our commissioner from Health and Human Services says that he can do this within his department. That he will look for that within this department, to have these services provided. He is willing to work with the Insurance Commissioner in order to get this data available so that people can make appropriate decisions on healthcare and insurance. If this money is not available, if this staff is not available, this will not be done. He feels, the Commissioner

of Health and Human Services and the Commissioner of Insurance, feels that this is probably one of the most important pieces that we could do, to provide a council so that we can move along as other states in accessing data so that we can make decisions based on data.

SENATOR LARSEN: If the issue in fact is the release of information that our current department already has, why would we not in fact, specify the kind of data that needs to be released for discussion by the CON, rather than create a full council that appears to almost work at odds with existing departments that we have. It would seem to me that we would want to be a little more direct in requiring that a release of certain data that we need to make public health decisions, rather than creating a nonprofit council that somehow is set up at odds with our existing departments and costs our departments to perform services to that nonprofit?

SENATOR O'HEARN: This is not just about the CON task force. This is about the Insurance Commissioner being able to make decisions. This is about insurance companies making decisions. This is about the public being able to make decisions, and you can't make decisions unless you have the data.

SENATOR LARSEN: And I would question you why can't the public and the industries that are seeking this information, say specifically what kind of information they want and we work on that in a fully disclosed discussion within the laws that we have, rather than creating a nonprofit council?

SENATOR O'HEARN: That is what the purpose of this is, is to bring these two people together to get this data, to keep privacy of a high priority and bring the two people, two groups of people that work together on this issue, to work with this council in order to make this move forward rather than to move it with a cumbersome law that is going to cost us money.

SENATOR GATSAS: Thank you Mr. President. In the short time that I have been here, this is the first piece of legislation that we have ever allowed anybody, any agency, to set fees without our approval or JLCAR'S approval. I take you to page one, line 19. "Develop a fee schedule for providing technical assistance and access to the council's data and information." I take you to page three, line four and five, that allows them for fee schedules. I don't understand how we could possibly allow this piece of legislation...and again, I am not talking about the merits of the policy of the bill, we are talking about fees and we are just letting somebody arbitrarily decide, who and how much, they are going to charge somebody. So with that statement, Mr. President, I would like to move to table so that we can look at it.

### **MOTION TO TABLE**

Senator Gatsas moved to have **SB 78-FN** laid on the table.

**A division vote was requested.**

**Yeas: 11 - Nays: 11**

**Motion failed.**

SENATOR FLANDERS: Thank you Mr. President. I will be very quick. I would like to point out if I may, that this information is there. At the present times, insurance companies who are figuring premiums for the state of New Hampshire are using information that may be two and

three-years-old. We are not being fair to our premium payers and our policyholders, that we don't have current information. If we had a situation three years ago where people had lots of fractured ankles or broken legs, and that has been corrected because of something that has happened, the insurance company should know this. Also for those of us who support the CON Board, I am told, although I have not served on it, that they have a lot of problems getting information to make big decisions on what should happen on the CON Board. This is, I think, a very important piece of legislation because it just doesn't make any sense to have that information there and not being able to get hold of it to use it for many, many important financial matters. Thank you.

SENATOR BARNES: Thank you Mr. President. Senator Flanders...

SENATOR FLANDERS: Yes sir.

SENATOR BARNES: You heard Senator Gatsas make his comments. Can you address his comments? You sit on the same committee that he does, the Joint Rules, I am just wondering what your thoughts on that are?

SENATOR FLANDERS: I would ask the Finance people to answer that. I think that is a Finance question rather than a policy question.

SENATOR ESTABROOK: Thank you Mr. President. Members may recall when this bill came through from the policy committee. I opposed it then because of my concerns regarding the establishment of a non-profit voluntary council to handle our data. Now as it has been described without the charges to the healthcare providers, of course that is an improvement, but we are now told that HHS will make this a priority in finding funding within the department to perform these functions. That concerns me, given the status of services in Health and Human Services and the difficulty that we are having in providing direct services to our citizens in dire needs. I think that if we want to go down this route, we want to have them to this extent, in managing this data and developing the data, we should acknowledge the costs to Health and Human Services and include that cost here.

SENATOR D'ALLESANDRO: Thank you Mr. President. I, too, rise against the amendment. I say this: the data is going to have to come from Health and Human Services. Health and Human Service to the council, to someone else. If indeed the data is not coming from Health and Human Services, is it not our responsibility to make sure that Health and Human Services provides the data? They are a state agency. If a board or commission requires data from a state agency, it should be a priority of that state agency to deliver that data. If indeed that data is not current, then, we, as legislators, have a responsibility to make sure that that agency delivers. We don't have a responsibility to create a not for profit agency that is going to go to the state agency and ask for the data. They are going to have better luck getting it than we do? I mean, it seems to me that doesn't make a great deal of sense. Thank you Mr. President.

SENATOR GATSAS: Thank you Mr. President. I guess that I am a little confused. This piece of legislation came forward by the Insurance Department. If that is not correct, I certainly would stand...I am sorry? Let me finish. If the Insurance Department has come forward with this, and if they are an agency that has the ability to raise revenues that they need from within the department based on insurance carriers premiums, then everything that I see before me could be done within the Insurance Department and they would have to go to Rules to set this in place. Why are we doing it outside the Insurance Department? I am not really clear

of why this is being set up because when we start talking about data that is being given out, I don't understand why we would be giving it out to anybody else and the Insurance Department should be doing this work from within their own bounds. It is not clear to me why this legislation is coming forward so that two agencies in the state, that need to do reporting, and help the employees and employers in the state of New Hampshire to reduce healthcare costs, why they couldn't do that now, why do we need a council to do that? Thank you.

SENATOR CLEGG: Thank you Mr. President. First off, I would like to point out that Health and Human Services already has this data. It already collects this data for its own purposes, it is not just a nice kid in the neighborhood and it doesn't share. We put this together because of the hospitals, the insurance companies, and the medial profession. They needed the information and they couldn't get it. Now someone said, well why don't we just use the Insurance Commissioner and have her raise rates and charge...that is kind of what we had when the Finance Committee said no, because those always come back to the ratepayer, and we don't think that the ratepayer should pay for this. So they worked out a system that said that they have to pursue their own funding. My understanding is that they already have some promises, maybe not enough to do the whole thing. Setting fees? We don't have any right to set fees. It is an independent council. Now if we want to fund this and we want to be in charge of this, then we would have to pay for it, and then we could set fees, but that is not what we want to do. We don't want to put any money into this. We want them to be semi-independent, but we want Health and Human Services to share the information they already compile and don't share with anybody else. This is the cheapest way of getting things done, so that we all have the information, privacy is still protected and we get what we need for the hospitals, doctors and the insurance companies to set rates with all of the information that is necessary. Thank you.

**Question is on the adoption of the floor amendment (1210).**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Estabrook.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Below, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Foster, Clegg, Gatsas, Barnes, Martel, Morse, Prescott.**

**The following Senators voted No: Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 18 - Nays: 4**

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**Senator Sapareto is excused for the day.**

**Recess.**

**Out of recess.**

**SB 80**, relative to vocational education and the automotive technology curriculum. Finance Committee. Ought to pass, Vote 5-1. Senator Odell for the committee.

SENATOR ODELL: Thank you Mr. President. I move SB 80 ought to pass. This bill requires the Department of Education to develop and implement an automotive technology curriculum in the regional career and technology education centers to provide statewide opportunities for high school students interested in careers in the automotive industry. This bill will increase state expenditures by \$90,000 but will be matched by the New Hampshire Automobile Dealer Association in order to obtain certification for the 18 regional career and technical education centers that offer courses in automotive technology. Please join me by voting ought to pass. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**SB 95-FN-L**, relative to the development of workforce housing within municipalities. Finance Committee. Ought to pass with amendment, Vote 5-1. Senator Gatsas for the committee.

**Senate Finance**

**April 3, 2003**

**2003-1121s**

**06/09**

#### **Amendment to SB 95-FN-LOCAL**

Amend RSA 36:47, II-a as inserted by section 3 of the bill by replacing it with the following:

II-a. Subject to available funding, each regional planning commission shall review the local land use regulations of any municipality in its region within 6 months of receiving a written request from the planning board, selectmen, or city council and make suggestions concerning the exclusionary effects of the ordinances and the ordinances' compliance with the municipality's obligation under RSA 674-A:2. As part of such review the regional planning commissioner shall make recommendations concerning ways in which the ordinances could be changed to bring the municipality into compliance.

SENATOR GATSAS: Thank you Mr. President. I move SB 95 ought to pass with amendment. Thank you.

**Amendment adopted.**

SENATOR LARSEN: I rise to commend the Senate for moving on this, what is one of the more important bills coming before us this session. When we started, Senator Gatsas and I, well he actually served on the committee commission longer than I, but it seemed to be an uphill battle, but one in which we knew we had to win. One which we knew that we had to move the discussion on how to promote work force housing in our state to increase the numbers of opportunities available for people who are in fact our work force. As I was looking through some clips last night, I found an interesting statement which I thought would enforce the importance of this. It was a statement made by a demographer, Peter from Exeter, who actually said that he was talking about elderly housing as well, saying that the state should look to subsidize work force housing instead of elderly housing because New Hampshire needs workers who spend money. People aged 35 to 44 spend twice as much locally as retirees. If you are going to subsidize anything he says, you want to subsidize a type of housing that has a multiplier affect. With work force housing, you get workers and people who are very economically active locally. If you get subsidized housing for the elderly, you get none of that. While

I have no trouble with subsidizing elderly housing, I hope that people recognize in fact, the multiplier affect that this has and certainly is much needed in this state with the housing shortages that we have. Thank you very much Mr. President.

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 96-FN**, establishing a pharmacy discount program for seniors and disabled persons and making an appropriation therefor. Finance Committee. Ought to pass with amendment, Vote 6-0. Senator Gatsas for the committee.

**Senate Finance**

**April 2, 2003**

**2003-1111s**

**04/09**

### **Amendment to SB 96-FN**

Amend RSA 167:100 as inserted by section 1 of the bill by inserting after paragraph III the following new paragraph:

IV. The department shall hold harmless, from any financial costs, all pharmacies participating in the program. At a minimum, the state shall reimburse pharmacies for their actual costs for participating in the program.

Amend the bill by replacing section 2 with the following:

2 Appropriation. There is hereby appropriated the sum of \$10 for the fiscal year ending June 30, 2004, and the sum of \$10 for the fiscal year ending June 30, 2005, to the department of health and human services to implement the pharmacy discount program established by this act. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

SENATOR GATSAS: Thank you Mr. President, I move SB 96 ought to pass with amendment. Thank you.

SENATOR LARSEN: I actually rise to discuss the committee amendment. It is interesting to have two of the bigger bills coming up right in a row and both of which Senator Gatsas and I had worked on. What I have concerns on regarding SB 96 as amended by Finance. We did have a discussion in Finance on what is the creation of a pharmacy discount program similar to? The discount program that Maine has passed. As I pointed out to Senate Finance, this is a baby step when we could act in fact, and should be looking at a giant step to promote pharmacy access to the seniors and people who are disabled in our communities who have less ability to pay. The Original bill was in fact the pharmaceutical benefit for seniors with disability and they **TAPE INAUDIBLE** 200 percent below poverty. The amendment created in Finance, takes baby steps which is a discount card created similar to what Maine has and Maine has approved through the Supreme Court discussion and currently under review by the Supreme Court right now. The concern is that while you might create a discount program for seniors, you still have a large segment of our seniors and disabled population that do not have the ability to pay even with the 25 percent discount. That is the segment of the population that have to convince the community to address. That is the segment of the population that has a crying need for help to support what are horrible choices right now, of whether they can pay for pre-

scription drugs or make choices of purchasing their food or other payments. I am in support of the amendment in committee because I felt that it moved in baby steps. I would like to see us take a giant step in the near future. I urge the body to recognize that we have a large road ahead of us in terms of making progress, in terms of making prescription drugs affordable in this state. If Senator Barnes wishes to ask me what elderly are, I would refer him to his large stack of dictionaries and statutes.

SENATOR BARNES: That comes later, Senator. Thank you Mr. President. Senator Larsen, during the time that you sat on the committee, did you discuss the fact that people should shop for their drugs because in Raymond, the two drug stores across the street from each other, was about a 30 percent difference in just walking across the street from one chain to another chain. Has that ever come up in discussion that people should do a little shopping around when they are able to? I realize that in the North country, there might only be one drug store in the area, but in areas like the city folk have, they have choice. Has that ever been discussed?

SENATOR LARSEN: I think that some of the towns did in fact, in educating elderly folks and people with disabilities, those with high prescription drug needs, how to help them to access what is a very complicated way of finding prescription drugs that they can afford. Sometimes they find a discount, but they still can't afford it. I agree that people need to shop around for prices. Through the course of our two-year study, found discount drugs available through online sources, through medicaid, through discount cards provided by the pharmaceutical industry, but the problem still remains that if you are 200 percent or below poverty and you get a huge prescription drug bill, you still can't afford it even if you get a 25 percent discount.

SENATOR BARNES: Would you believe that a few years ago, I received in the mail a card from the state of New Hampshire giving me some kind of a discount on drugs? I got all excited and the next time that I had to have drugs, I went to my drug store that I have been going to for a long time. The girl started to laugh at me. She said what is that silly thing? I said that silly thing came from the state of New Hampshire. She said that "we don't honor that here. This is a national chain." Okay? I suppose that you have heard this story, so that is when I went across the street. They didn't take it either but there again that was a national chain, but the price was 30 percent cheaper. I advise people to go across the street and ask questions at the other pharmacy.

SENATOR LARSEN: I agree, and in fact, as we discuss this pharmaceutical discount program, we discussed that we need to make sure that it is one that we can recognize by a great...as many pharmacy industries, or pharmacy's as possible. That was the problem with the previous discount card. Those details need to be worked out.

SENATOR BARNES: Thank you very much.

SENATOR GREEN: Thank you Mr. President. I am beginning to realize that certain things in the political process of making laws never changes. We just spent a considerable amount of time talking about \$10 on the financial side and Senator Gatsas is going to make that available so that it won't cost the state a cent. When we have million dollar issues in front of us we seem to dispose of them very quickly. I am glad to see that things don't change in the process. Thank you.



SENATOR ESTABROOK: Thank you Mr. President. I want to rise and register my concern regarding how much the bill has been weakened, with the amendment coming out of Finance. The provision in the bill that calls for there to be at least a 2 percent cost-sharing by the state of the prescriptions and that is part of an element that is necessary to make the program work and yet we have appropriated \$10. I will support this going forward, just to have the policy in place, but I think that we have to acknowledge for ourselves, that what we have done here is quite limited.

SENATOR GATSAS: Thank you Mr. President. The reason why we put \$10 in this bill is because there is legislation now that Maine has brought forward. We felt that it was important to bring this piece of legislation forward knowing that the Senate had obviously, once the House passes over the budget, that we have an opportunity to find a funding source if the legislation in Maine is passed successful. So with that we funded it with \$10 and Senator Green, it makes me happy to know that we increased it to \$10 so that I could pay for a piece of legislation in the state of New Hampshire. So I have that \$10 and I will give it to your Finance Committee so that you can pay for this project.

SENATOR GREEN: I will put it in the state treasury.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 107-FN-A-L**, establishing a statewide education accountability system. Finance Committee. Ought to pass, Vote 6-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move SB 107 ought to pass. This bill establishes the statewide education accountability system. Please join the Finance Committee in ought to pass. Thank you.

Senator O'Hearn offered a floor amendment.

Sen. O'Hearn, Dist 12

**April 10, 2003**

**2003-1257s**

**04/10**

### **Floor Amendment to SB 107-FN-A-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 Policy and Purpose. The general court hereby establishes a statewide accountability system to ensure that public schools are providing all students an opportunity to receive an adequate public education as set forth in RSA 193-E:1-2. A comprehensive, statewide educational accountability system should include:

I. Statewide targets for all schools.

II. Systematic measurement of school performance at the state and local level using multiple valid measures.

III. Reporting on pupil performance at the school, school district, and state levels.

IV. The opportunity for schools that are not making satisfactory progress toward statutory targets to receive assistance from the state, including assistance with the development, implementation, and evalu-

ation of local education improvement plans designed to meet state targets and any performance goals developed locally to meet identified educational needs.

V. A statewide system of recognition of achievement for schools that meet or exceed statewide targets and strategic responses for schools that do not meet these targets.

2 Adequate Public Education; Reporting on the Delivery of Education. RSA 193-E:3 is repealed and reenacted to read as follows:

193-E:3 Reporting on the Delivery of Education.

I. By August 1, 2003, and annually thereafter, each school district shall report data to the department of education, at the school and district levels for the previous school year, on the following indicators, provided that the department shall develop a reasonable schedule to phase-in the reporting of data that is not being collected systematically during school year 2002-2003:

(a) Numbers and percentages of pupils with disabilities, limited English proficient pupils, pupils in advanced placement programs, economically disadvantaged pupils, and pupils of major racial and ethnic groups.

(b) Attendance and dropout rates.

(c) Performance on statewide tests administered pursuant to RSA 193-C:3, IV(i) including the percentage of pupils reading at grade level on the reading component of the grade 3 statewide educational assessment.

(d) Percentage of graduating pupils going on to post-secondary education and military service.

(e) Number and percentage of classes taught by highly qualified teachers.

(f) Teacher and administrator turnover rates at the school and district levels.

II. By August 1, 2003, and annually thereafter, each school district shall report to the department of education data at the school and district levels for the previous school year.

III. The department of education, with the approval of the legislative oversight committee established in RSA 193-C:7, may implement and report data on any additional indicators deemed relevant to the purposes of this section.

IV. In order to reduce school districts' administrative time and costs, the department of education shall develop and utilize user-friendly, computer forms and programs to collect the data set forth in paragraph I and all enrollment and cost data related to determining the cost of an adequate education. The department shall request funds as part of its biennial operating budget to develop, update, and maintain the required forms and programs.

V. Not later than December 1, 2003, and annually thereafter, the department of education shall issue a public report on the condition of education statewide and on a district-by-district and school-by-school basis. This report shall be entitled "New Hampshire School District Profiles." It shall include demographic and pupil performance data reported in paragraph I and other relevant statistics as determined by the department of education. Comparisons with state averages shall be provided for all data reported. Comparisons of each district and school to itself based on its own performance for the prior school year and its most recent 3-year rolling averages shall be provided. Statewide rankings of each district and school shall be provided, including a statewide rank-

ing of each school and school district based on the percentage increase of improvement as compared with the same school district's performance in the previous year. The report shall be organized and presented in a manner that is easily understood by the public and that assists each school district with the identification of trends, strengths, and weaknesses and the development of its local school education improvement plan. The local school district shall provide a copy of the report to the public upon request.

3 New Chapter; School Performance and Accountability. Amend RSA by inserting after chapter 193-F the following new chapter:

## CHAPTER 193-G

### SCHOOL PERFORMANCE AND ACCOUNTABILITY

193-G:1 Definitions. In this chapter:

I. "Adequate yearly progress" means that measure of school performance as defined in 34 C.F.R sections 200.13 through 200.18.

II. "Commissioner" means the commissioner of the department of education.

III. "Department" means the department of education.

IV. "Highly qualified teacher" means a person who is certified by the department of education and who has demonstrated, through a process approved by the department of education, teaching skills in the core subjects of instruction.

V. "Statewide assessment" means the New Hampshire education improvement and assessment program as established under RSA 193-C.

193-G:2 Statewide Targets.

I. On or before the 2013-2014 school year, schools shall ensure that all pupils are performing at the basic level or above on the statewide assessment as established in RSA 193-C.

II. In addition to the requirements of paragraph I, schools shall meet statewide targets as established in rules adopted by the state board of education pursuant to RSA 541-A, relative to 3<sup>rd</sup> grade reading.

III. Schools shall meet statewide targets as established in rules adopted pursuant to RSA 541-A, relative to the statewide assessment.

IV. Schools shall meet statewide targets as established in rules, adopted pursuant to RSA 541-A, relative to retention rate.

V. Schools shall meet statewide targets as established in rules, adopted pursuant to RSA 541-A, relative to the percentage of pupils who graduate with a regular diploma from an approved high school.

193-G:3 Identification and Public Disclosure.

I. The commissioner shall annually compile and disseminate to the governor and council, the president of the senate, the speaker of the house, local school boards, superintendents of schools, the public, and shall make available on the department website, a list of schools that are not meeting the statewide targets set forth in RSA 193-G:2.

II. The department shall notify schools identified under this section of the availability of technical assistance. The department shall provide technical assistance to the school districts upon request.

193-G:4 State Assistance to Local School Districts; Education Improvement Fund Established.

I. There is hereby established a local education improvement fund in the state treasury for the purpose of providing assistance to local school districts. This fund shall be non-lapsing.

II.(a) The department of education is authorized to use the amount transferred to the education improvement fund, in addition to any available federal funds for similar purposes, for any of the following purposes:

(1) To support and administer the local education improvement plan program.

(2) To collect, analyze, and report the demographic and educational improvement data.

(3) To administer the grade 3 reading component of the assessment program.

(4) To assist local school staff with the analysis and use of school performance data.

(5) To provide grants as available to school districts for local school improvement.

(6) To provide a system of annual recognition to identify best practices and promote school improvement.

(b) For the biennium beginning July 1, 2003, and every biennium thereafter, appropriations from the fund shall be authorized by the legislative fiscal committee and the governor and council.

(c) Moneys transferred to the education improvement fund shall not be transferred, diverted, or used for any purpose not specified in this section.

III. The priority for the use of any state funds shall be given to lower-performing non Title I schools.

193-G:5 Local Education Improvement Plan and Strategic Responses.

I. (a) Each school district appearing on the list required under RSA 193-G:3, shall develop and implement a local education improvement plan. The plan shall be reviewed annually and shall be included in the school district's annual report. The development and implementation of the plan and review shall be carried out with input from administrators, teachers, parents, employers, and other community members. The plan shall be approved by the local school board by December 31 of the year in which a school is identified for disclosure and a copy shall be forwarded to the department of education.

(b) At a minimum, each plan shall:

(1) Identify the area in which the school failed to meet the annual statewide targets established under RSA 193-G:2.

(2) Identify and describe the strategy the school intends to implement to improve its performance.

(3) Establish and explain a strategy designed to promote family and community involvement.

(4) Detail how the school district budget reflects the goals of the local education improvement plan.

II. In addition to the provisions of subparagraph I(b), each plan may include the following elements:

(a) The school's curriculum including curricular priorities and instructional materials.

(b) Instructional models that incorporate research-based practices that have been proven to be effective in improving student achievement.

(c) Formal and informal opportunities to assess and monitor each child's progress.

(d) Evidence of data-based decisions.

(e) Structural reform strategies that may include schedule, organization, support mechanisms, and resources.

(f) Shared leadership structure to support school improvement.

(g) Professional development that is aligned with school improvement goals.

(h) External support and resources based on their effectiveness and alignment with school improvement plan.

(i) Extended learning activities for students.

**193-G:6 Education Improvement Fund Established.**

I. There is hereby established a local education improvement fund in the state treasury for the purpose of providing assistance to local school districts. This fund shall be non-lapsing.

II.(a) The department of education is authorized to use the amount transferred to the education improvement fund, in addition to any available federal funds for similar purposes, for any of the following purposes:

(1) To support and administer the local education improvement plan program.

(2) To collect, analyze, and report the demographic and educational improvement data.

(3) To assist local school staff with the analysis and use of school performance data.

(4) To provide grants as available to school districts for local school improvement.

(5) To provide a system of annual recognition to identify best practices and promote school improvement.

(b) For the biennium beginning July 1, 2003, and every biennium thereafter, appropriations from the fund shall be authorized by the legislative fiscal committee and the governor and council.

(c) Moneys transferred to the education improvement fund shall not be transferred, diverted, or used for any purpose not specified in this section.

III. The priority for the use of any state funds shall be given to lower-performing non Title I schools.

193-G:7 Powers of the Department of Education. Nothing in this chapter shall be construed to permit either the department of education or the state board of education to take control of the daily operations of any local public school.

4 New Subparagraphs; Statewide Education Improvement and Assessment Program; Program Goals Amended. Amend RSA 193-C:3, IV by inserting after subparagraph (h) the following new subparagraphs:

(i) At the end of grade 3, to determine if pupils are reading at grade level on a standardized reading test to be developed by the department as part of a statewide assessment system.

(j) At the school, district, and state levels, to provide performance reports on specific subgroups of pupils as required by federal law.

5 New Subparagraph; State Board of Education; Rulemaking. Amend RSA 21-N:9, II by inserting after subparagraph (bb) the following new subparagraph:

(cc) School accountability, performance standards, strategic responses, and statewide targets as required by applicable federal law and in accordance with RSA 193-G.

6 Statewide Education Improvement and Assessment; Duties of the Legislative Oversight Committee. RSA 193-C:8 is repealed and reenacted to read as follows:

193-C:8 Duties of the Legislative Oversight Committee. The committee shall:

I. Review the development and implementation of the program to ensure that they are in accordance with legislative policy. Implementation of the program shall be in conjunction with the committee's review.

II. Review the provisions of RSA 193-G and submit a report of such review every 2 years after the effective date of this section to

the speaker of the house of representatives, the president of the senate, the governor, and the chairpersons of the house and senate education committees.

III. Prepare legislation that is needed as a result of the review of the progress and results of the policies implemented under this chapter, including any changes necessitated by federal law.

IV. Confer with the commissioner and the state board of education to identify operational principles, which should guide the work of the department of education in supporting improved school performance and accountability.

V. Analyze existing department of education programs and initiatives which support improved school performance and accountability.

VI. Receive reports from the commissioner regarding the status of public education in New Hampshire, updates on the improvement made by local school districts toward achieving satisfactory progress in statewide student performance under RSA 193-G:2 and status reports on the on-going issues and implications of school accountability at the state and federal level. Reports by the commissioner shall occur at least once annually and more frequently as needed, as determined by the committee and the commissioner.

VII. Receive reports from the state board of education regarding any rules proposed pursuant to RSA 193-G:2 prior to the submission of those rules to the joint legislative committee on administrative rules.

7 Repeal. The following are repealed:

I. RSA 194:23-d, relative to state financial aid.

II. Section 8 of this act, relative to the department of education investigation of gains-based testing.

8 Department of Education; Gains-Based Testing. The commissioner of the department of education shall investigate the feasibility of gains-based testing in meeting the needs of a statewide testing program. The commissioner shall report all findings and recommendations to the house and senate education committees no later than November 1 of each year.

9 Effective Date.

I. Paragraph II of section 7 of this act shall take effect June 30, 2005.

II. The remainder of this act shall take effect July 1, 2003.

**2003-1257s**

### AMENDED ANALYSIS

This bill establishes a statewide education accountability system which includes school performance standards, the creation of an education improvement fund, and the development of a local school improvement plan in each school district.

SENATOR O'HEARN: Thank you Mr. President, I would like to offer a floor amendment. Granted, there are many pages to the document, but what it is, is that the Senate Education Committee got together this past week and worked with the Department of Education and worked through these pieces correcting the grammar, correcting the English and aligning it so it fit in with the No Child Left Behind. We tried to separate out state regulations from federal regulations, made some technical corrections to references. Made sure that the reading assessment was part of our language art test so that the reading assessment piece to this test would be paid for with federal dollars. This is still no fiscal note. It is just a better written bill and I thank the Education Committee for working this past week to bring this amendment forward. I ask ought to pass with amendment.

SENATOR ESTABROOK: Thank you Mr. President. I have a question of Senator O'Hearn. When you said that there was no fiscal note, there is no appropriation? I haven't had a chance to really look through this, but is that correct? There is no appropriation?

SENATOR O'HEARN: The appropriation is in the Governor's budget for over a half of million dollars. There is \$250,000 that is leftover from the School Improvement Funds from this year that will also hopefully, go into this.

SENATOR ESTABROOK: Thank you Mr. President. The funding has been provided for?

SENATOR O'HEARN: That is correct.

SENATOR ESTABROOK: Thank you.

SENATOR ESTABROOK: Thank you Mr. President. I felt that I just needed to rise and say that I appreciate the work of the Education Committee and there have been changes in the policy pieces of this bill so even though we are discussing this under a report from the Finance Committee, there has been changes to policy I need to comment on. I think that as we think about this there is a continuing work in progress going forward to the House, I can support it. But I have serious concerns that what we are doing here with the policy is we are leaving totally up to the State Board of Education and the Department of Education where to set the bar in determining annual yearly progress which will determine how many of our schools be declared in need of improvement. That concerns me. There are other improvements that I think that have been made to the bill in terms of the performance goals, the definitions, especially in regard to making sure teachers are certified in the areas that they are...teaching in the areas that they are certified for and other improvements that TAPE INAUDIBLE to the House Education Committee. But as it exists with the funding being provided for is certainly an improvement and would support it in that regard.

SENATOR LARSEN: Senator O'Hearn, when we were in discussion on this bill, I just wanted to confirm again, we talked about the funding about the improvement fund and you had indicated that you had a discussion with the Senate Finance Chair, and hopefully we have a commitment from this body to in fact, maintain what is in the Governor's budget for the improvement fund as well as the nonlapsing funds would be added, so that it was my understanding that there was in fact, \$750,000 available to help schools who somehow found themselves in need of technical assistance in order to be called a nonperforming school?

SENATOR O'HEARN: Yes I have had conversation with the Chair of Senate Finance and that money that is in the School Improvement Fund is in the Governor's budget, and as you know, we have to watch that as it goes to Committee of Conference when they work on the budget. There is another \$250,000 that was leftover from last year. That money and according to the legislation that we have here, that money is, priority going to non-Title I schools because there is money coming in from the federal government for Title I schools for the purpose of technical assistance and improvement for schools that are not able to make adequate yearly progress.

SENATOR LARSEN: When we left last night we didn't have the exact language for adequate yearly progress. I see now that we are going to define it by referencing federal law?

SENATOR O'HEARN: As I have tried to bring to light to the Education Committee and to people that have come to different conferences and workshops on dealing with the federal legislation, I think that the work that was given to us by the Senate attorney dealing with what the federal law says. We really have to stick very close to what the federal law says. We have little room to move on what adequate yearly progress is. Setting our targets is where we will be working with the State Board of Education and working out those priorities and where they are. And with the concerns that were addressed about the State Board having too much oversight on this, we added one more job on the oversight committee that they receive reports on the progress of the rules from the State Board of Education so that they could take a look at them and have some influence, work or address some of the needs that the State board may have in dealing with this.

SENATOR LARSEN: Thanks.

SENATOR LARSEN: I just rise to express some concerns even though we in fact worked very closely for many hours with Senator O'Hearn. I continue to have some concerns about, and I think that many of you are aware of those concerns for your districts, about the effectiveness of the No Child Left Behind on our local school districts. We...because of the No Child Left Behind, have to pass this accountability measure. We have to begin to identify schools and in fact, label them over time, if they are in fact, found to be not performing at what is a statewide target. Rather than put into law what we were going to tell the schools what they had to attain, you will see on page three that we pretty much left it up to the State Board of Education to set the targets for our educational policy. What percentage of children should be reading at grade level, what percentage of children should be attaining basic or proficiency standards. We are leaving a lot of it up to the State Board of Education. We are doing that purposely, but in fact, I have concerns as long as we have a reasonable State Board of Education, we will probably have reasonable school performance requirements. It is up to all of us to keep an eye on this and certainly we will hear from our own local school districts if in fact they are found to be failing, when in fact they are working their hardest to accomplish good education in their district. Clearly, part of a performing school is the money to do that. The money to do that comes from providing enough adequate education funds to those school districts to perform at the levels that we are asking with certified teachers that stay in place for more than a couple of years and that, too, goes back to our supporting an adequate education in the local school districts. Those are some of my concerns with the bill. Clearly, we have to pass this today and I think that this is a work in progress. So I commend Senator O'Hearn, I know that she worked very hard on this. As I say, it is a work in progress. Thank you.

SENATOR O'HEARN: Thank you Mr. President. I have to address No Child Left Behind. I think that with putting \$900 million of our own state money into schools and another \$80 to \$90 million dollars in federal dollars, and since we have done this and since we have started adequacy and put this kind of money in, our test scores have gone down. They have not gone up. I am not concern about our state board as Senator Larsen is. Our state board has meetings that are open just like ours. I am not concerned with the rulemaking process because the rulemaking process is also an open process. But as our attorney having read this and having talked with the federal government, having talked with the



Department of Education, there is very little room to move for the State Board of Education on how they write the rules. There are guidelines, they are setting targets, they don't want to label schools as failing, but what the whole purpose of what this is, is to make sure that our schools are improving. We have two jobs here. One, to comply with the federal government on the No Child Left Behind and two, to comply with the courts on accountability that was required by us last year. If this were without the government getting involved, I would bet that our requirements with the state would be much harsher. We are moving forward the best that we can. The federal law will be reviewed again in 2005 and I think that the state board will do a fine job for the work that they have in front of them. Thank you.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 117-FN-A-L**, authorizing video lottery administered by a gaming oversight authority, and establishing a pharmacy benefit program. Finance Committee. Rerefer to committee, Vote 5-1. Senator D'Allesandro for the committee.

**SENATOR D'ALLESANDRO:** Thank you Mr. President. I move SB 117 be rereferred. Thank you Mr. President.

**Recess.**

Out of recess.

**Question is on the committee report of rerefer.**

**A roll call was requested by Senator Roberge.**

**Senator Roberge withdrew her request for a roll call.**

**Question is on the committee report of rerefer.**

**Committee report of rerefer is adopted.**

**Senator Gatsas Rule #42 on SB 117-FN-A-L.**

**Senators Boyce, Johnson, Peterson and Roberge are in opposition to the motion of rerefer on SB 117-FN-A-L.**

**SB 132-FN-A**, extending the Parents as Teachers program in Sullivan county and making an appropriation therefor. Finance Committee. Ought to pass, Vote 5-1. Senator Odell for the committee.

**SENATOR ODELL:** Thank you Mr. President. I move SB 132 ought to pass. This bill extends the Parents as Teachers Program in Sullivan County. The bill also transfers the Program from the Department of Health and Human Services to the Department of Education. The Finance Committee asks your support for this motion of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 138-FN**, clarifying the exemption from the interest and dividends tax for distributions from qualified tuition savings programs. Finance Committee. Ought to pass, Vote 6-0. Senator Below for the committee.

**SENATOR BELOW:** Thank you Mr. President. I move SB 138 ought to pass. This bill clarifies the exemption from the interest and dividends

tax for income and distributions from qualified tuition plans. Under current law, distributions from New Hampshire's college tuition savings plans, which are used to pay for higher education costs, are exempt from taxes. Senate Bill 138 extends this exemption to distributions for any state sponsored college savings plan that is qualified for federal tax benefits under section 529 of the Internal Revenue Code. According to the Department of Revenue, the fiscal impact of this legislation is small. Please join me by voting ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

### **MOTION TO REMOVE FROM THE TABLE**

Senator D'Allesandro moved to have **SB 35** taken off the table.

**Adopted.**

**SB 35**, relative to the transfer and exchange of certain state-owned land for certain land owned by the Manchester water works.

**SENATOR D'ALLESANDRO:** Thank you Mr. President. I would like to yield to Senator Below to give the report.

**SENATOR BELOW:** Thank you Mr. President. Senate Bill 35 authorizes the Manchester Water Works to transfer a Merrimack River frontage parcel that they own for a parcel of land acquired through the state's Land Conservation Investment Program for (LCIP) in 1989 by the New Hampshire Fish and Game Department. The Fish and Game parcel is considered ideal by the Water Works for the proposed location of a water withdrawal and treatment facility to increase their capacity for future growth. This bill received considerable scrutiny by the Environmental Committee, in large part because it represents the first LCIP parcel to be proposed for transfer to developed use. The New Hampshire Land Conservation Investment Program funded the permanent conservation of 100,800 acres of outstanding natural and recreational lands between 1988 and 1993. The guiding and immedicable principal of LCIP is that these lands are held in public trusts by the towns and the state for the benefit of the citizens of New Hampshire in perpetuity. Identical language applies to parcels acquired through the state's current land conservation program, LCHIP as well. The bar for considering converting these lands from conservation uses to nonconservation uses must be set at the highest level. Conversion or removal of land from the public trust requires an act of the state legislature according to state statute. Thus, SB 35 was brought forward. The decision that we make on this bill will establish an important precedent which the terms of any future transfers of LCIP or LCHIP lands will be judged. That is partially why I am giving a long blurb, because I think that it is important for us to understand the criteria that were evaluated in the Environment Committee as we made this recommendation. Any proposal for conversion must be considered in light of its impact on the whole of the LCIP and must not be detrimental to the program. A proposal must also be considered in regard to the original intent and purposes for which the land was acquired. Indeed consideration should only be made in exceptional circumstances. Consideration is not limited to the following conditions but at a minimum, the following conditions must be satisfied. The proposed use, the new use, must be for a governmental agency or municipality. The proposed new use must demonstrate a clear and compelling need to satisfy public health or safety issues. Uses that should not be consid-

ered include recreational playing fields, town facilities, develop campgrounds and park facilities, schools and etceteras. A conversion should not be used or combined with to promote or otherwise facilitate development of adjacent lands. Any proposal for consideration must be accompanied by a thorough analysis of alternative sites including developed properties that could meet the governmental need. The petitioner must demonstrate to a high standard that all practicable options have been thoroughly evaluated and no reasonable alternatives exist. An alternative that costs more, is more complicated or requires more time to complete, may still be a reasonable and feasible alternative. The LCIP must be reimbursed with land or cash of a value at least equal to the unrestricted value of the land proposed for lease, at the time of the release. Value will be determined through an appraisal of the full market value of the property without development restrictions, that is the unencumbered value, unless otherwise condition. That is the way that properties were originally valued. In other words, the state would need to be able to use the funds to replace conservation values in a comparable or better fashion. This may include for example, the purchase of interest in other lands and contribution of associated stewardship fees and enhancement of LCIP stewardship endowment. The appraisal must meet state accepted standards. Land being replaced in kind, the substitute land or interest in land, must have equal or greater conservation value to the public than the land purposed for conversion and must be permanently conserved and placed in the public trust under the LCIP. Baseline documentation will be required for all conservation easements used as a replacement or substitute. The LCIP land purposed for conversion may be required to remain substantially in an undisturbed open space condition inasmuch as is possible. Depending on the size of the property in proposed activity, interest conveyed will be only those necessary to accomplish the proposed activity that can be sited off of the conservation land, that can't be sited off of the conservation land. The LCIP would require compensation for direct costs associated with the proposal according to agreed upon and potentially contractual schedule. Land converted but no longer used for its allowed purpose, may be required to revert back to its originally intended conservation use and ownership without compensation. It is the opinion of the majority of the Senate Environment Committee that this bill, as amended by the committee, has in fact, substantially addressed the conditions that are outlined. Specifically with the amendment, the state would be obtaining a 30.9 acre parcel in exchange for the seven acre parcel. We would be gaining approximately one and a quarter mile of river frontage compared to the 500' of river frontage on the current parcel. Most of the current parcel would in fact, remain in the conservation use, although it was originally intended for a boat...water access facility. Another site was developed for that purpose. The primary value of the parcel now is an eagle nesting roost along the banks of the Merrimack River. The intended new use will not conflict with the preservation of that current use. The bill also provides that should the appraised value of the seven acre parcel be greater than the 30.9 acres that the state would receive in exchange, the balance would be made up as a cash contribution to the LCIP program. Of course I think that others will speak to the compelling public need for the use of this property and the limited impact it will have on the parcel. I had a chance to visit the parcel and did observe that it is a heavily developed area. On one side there is a new shopping center and on the other side there is an extensive residential neighborhood. It is a dense white pine grove on that

site, most of which will be preserved. I think that in balance, the state is actually gaining lands that are conserved in the public trust and that indeed this is a meritorious legislation. So accordingly, we ask support on SB 35 as amended and voted ought to pass with amendment by the majority of the Environment Committee. Thank you Mr. President.

SENATOR GATSAS: Senator Below, you visited the seven-acre track? Did you visit the 31-acre track?

SENATOR BELOW: No. I didn't have that opportunity. I was waiting for the snow to melt.

SENATOR GATSAS: Would you believe that you must cross a railroad crossing to get to that 31-acre site and that the 31-acre site that has a mile of frontage starts from zero and goes to a greater elevation than what is on the seven acre site?

SENATOR BELOW: I would certainly believe that. I also understand that the right-of-way over the railroad would be a deeded access so there would be assured public access to the parcel.

SENATOR GATSAS: Do you know what the insurance to the town of Hooksett would cost to insure that right-of-way across that railroad?

SENATOR BELOW: I believe that this would be conveyed to the state not the town of Hooksett. I think that the state owns the current parcel.

SENATOR GATSAS: If the current use was going to stay as it is, and there was a public access right-of-way to it, what would the cost be for the insurance, by the state then, to allow people to cross?

SENATOR BELOW: I am not aware of that, that there would be a cost.

SENATOR GATSAS: Thank you.

SENATOR JOHNSON: Thank you Mr. President. I just want to thank Senator Below for that blurb that he gave us. It certainly filled in a lot of the areas that I think were gray. I had a couple of other comments that I would like to make if I may. Currently, Manchester's needs for water are about 17 and a half million gallons per day, which is withdrawn from Lake Massabesic. The safe-yield capacity is 20-and-a-half million gallons per day. Although those seem adequate at the present time, for the short term, the Water Works is really seeking a second source of water supply to serve its future water needs. During the hearing in Senate Environment, this bill was supported by the Office of State Planning, the New Hampshire Department of Environmental Services, New Hampshire Wildlife Federation, New Hampshire Fish and Game Department, New Hampshire Association of Conservation Commissions, and the New Hampshire Rivers Council. The proposed use will be for our governmental agency or municipality. There will be no new development of any of the adjacent land. I just wanted to pick up on that and let this body know how well it came out of the committee. Thank you Mr. President.

SENATOR MARTEL: Thank you very much Mr. President. During our lunch break I did speak to a member of the Water Works Commission, the Water Works Department of the city of Manchester. He informed me, as we were talking, I asked him some specific questions because I thought that maybe there was a change, okay, in this proposal, since yesterday. He explained to me, the cost of the land, okay, if we were to negate this current agreement or proposal, would actually cost the city of Manchester an additional \$1 million to buy the other tract of land. So, with that

guys, I certainly am not going to be able to support the change. I am voting against this proposal and I urge everybody to please vote ought to pass and honor it as well. Thank you Mr. President.

SENATOR D'ALLESANDRO: Thank you Mr. President. I appreciate Senator Barnes yielding. As the prime sponsor of this bill along with Senator Martel, I think that it is emphatic that we frame one item and that item is public interest and the public good because that is foremost in our minds. The public good. When you look at a piece of LCIP land and you have another utilization for it, the statute clearly indicates that it must be in the public good. Now we know that one of the most valuable resources that we have in this state is water and accessibility to water. We know that the growth and development of a community is based on its ability to obtain water. We also know that well water is problematic in the state of New Hampshire and that the city of Manchester, through the Manchester Water Works, has been extending its capability to supply water to the outlying areas. We know supply water to Derry, Candia, Auburn, Hooksett, Bedford. We do this by the way, in a very efficient and effective manner. The city of Manchester currently supplies water to the town of Hooksett. There is concern in the town of Hooksett about the LCIP land. There is no question about that. I have attended a meeting in Hooksett, and I understand that last night at a meeting of the town council, there was a 6-2 vote for the program but not for the taking of the LCHIP land. We have gone through many iterations in order to make this bill more acceptable to everyone. For example: the Revert-a-Clause is now in the legislation. If indeed the project didn't go forward, the land would revert back to the LCHIP. The easement will remain on the land. Only three quarters of an acre of the parcel will be used for the treatment facility. Three quarters of an acre. The rest of it will remain under the control of Fish and Game. Fish and Game supports the project. The city of Manchester will transfer to the LCHIP, the 30 acres of land on the other side of the river. If there is a difference in assessed value, that money will be given to the LCHIP. Public meetings have been held with people in Hooksett, beginning in November of 2002 going up to last night. The project has to be done because the capability of delivering more water does not exist without this amenity being put in place. As I said, by a vote of 6-2 the project is an acceptable one by the town of Hooksett. It is just this particular site. I go back to the most important ingredient. What is in the public's interest? It is in the public interest to do this. Yes there is an alternative site. It is \$1 million. That \$1 million will be passed on to the ratepayers. We don't want that. We want the least possible financial impact with the best possible result. I realize that every community has to be recognized, but when we look at the broad spectrum, and we say the "public interest", that is what this comes down to. What is in the best interest of the public at large? I say to you, that this project, well planned, well thought out, is in the best interest of the public. Thank you Mr. President.

SENATOR GATSAS: Thank you Mr. President. Senator D'Allesandro, I think our colleague Senator Below read from a text, and he did it well. I think that what I read here, from that text, and I think that he said it in his testimony, that "an alternative that costs more, is more complicated and requires more time to complete, may still be reasonable and feasible." Wouldn't you agree that if it costs more, and it is more feasible, that the council voting 6-2 on a home rule situation, sends a clear message?

SENATOR D'ALLESANDRO: The council voted 6-2 in favor of the project, they didn't like the site. I agree. The overriding issue in my estimation is, if the cost benefit ratio is not there, and in terms of the costs, that additional cost would put an additional burden on everybody involved. I don't think that it is the right way to go. That is why I support this piece of legislation.

SENATOR GATSAS: So the parcel of land that abuts the seven acre tract that is for sale, could cost more? There is a still a situation that you don't think is viable?

SENATOR D'ALLESANDRO: I think that we should be looking for the best way to deliver this service. If the two alternatives presented, if the cost differential is exorbitant, and the public benefit on the initial project is a good one, I would accept the public benefit situation and in that sense, save people money rather than spending the money.

SENATOR BARNES: Thank you Mr. President. I rise to oppose this piece of legislation. Senator Johnson was correct when he talked about the folks that have talked in favor of it. A group that is not in favor of it, that has worked very hard for conservation issues in the state of New Hampshire, and we heard last week how hard they have worked on various items concerning the lakes, is the New Hampshire Lakes Association. I have a letter here that was sent to Senator Johnson and I would like to read part of it. "Dear Senator Johnson, I am writing to express the NHLA's position on SB 35 which would allow the exchange of state owned land protected under the LCHIP program for certain land owned by the Manchester Water Works. Unfortunately, at the time of the public hearing, the NHLA Government Affairs Committee had not had the opportunity to review the legislation and formulate a position. In recent weeks, the committee has met and discussed SB 35." The New Hampshire Lake Association, which has done so much for us in this state, is opposed to SB 35 along with Senator Barnes on the committee and I believe Senator Prescott on the committee. Now, we talk about public interest. I am going to talk about public interest, too. We can save \$12 million by passing this bill. There is \$12 million for LCHIP. I am concerned about the folks out there in the state of New Hampshire, the public in our state, when they see us, because we are so big and we are so powerful. I saw a movie the other day with my wife. I know now why I don't go to too many movies. "It just ain't right", is what this guy that was running for President said, and another guy says, "We are the government, we can do any damn thing that we want to do." And that is what this is. We can do anything that we want to do. I am going to, if I may, get into the...I am playing lawyer here for a minute and I do not have a degree, I am sorry, but I am going to open the book and read a little section of it. It is on LCHIP. I am so concerned that we do this and we, the legislature say that it is okay. People are not going to want to give land and we are going to destroy this program. If that is what you want to do, that is good, we can save \$12 million here today. Manchester, for the public interest, that is what we are talking, the public interest. I think that it is for the public interest to follow the law. "The intent of the program" and I am reading out of the law book. It is Chapter 227-M. "The intent of the program is to conserve and preserve this state's most important natural, cultural, and historical resources through the acquisition of lands, and cultural and historical resources, or interest therein, of local, regional, and statewide significance, in partnership with the state's municipalities and the private sector, for the primary purposes

of protecting and ensuring the perpetual contribution of these resources." Now I am going to flash into another book that I have here. It is the dictionary. It is Webster's Dictionary. I am sure that you all have seen it. I am on page 628. It talks about perpetuity. Perpetuity is spelled out here. Strange isn't it? "Perpetual existence, duration, validity," let's see "forever". Now here we are, we passed a law. A lot of us got up and said many wonderful things because, oh, we want to preserve our heritage and we want to preserve our land and our water and all of the good things. Most of us probably voted for LCHIP, for the public interest, I might add. And here we are, as a state Senate, going to say the heck with it, we made a mistake and got a company, Manchester Water Works who is in business and who has another site that they can use and they said that during the committee hearing, just right next to the piece of land, they can do that very easily. The pipe isn't going to be any longer than what that other place can be, and we are going to stand here and perhaps help destroy this program? If we are going to do that, Senator Green is lucky. He just found \$12 million. I don't think that any of you want to do that. I think that you want to keep the program in existence. But if I am someone who has some land that I might want to give the state, and I read about this in the local newspaper, why should I give my land that has been in my family forever, in perpetuity, what the law says, forever, and, we, because we are legislators, we are the government, we can do what we damn well please? I am sorry. I don't think so. Thank you Mr. President.

SENATOR PRESCOTT: Thank you Mr. President. I would like to stand up in favor of pump houses. That is my business. I am in favor of the project. I think that it is a good project. The problem that I have is, we, in the Environment Committee asked a question. How much would it cost for an alternative site? In fact, the proponents of the bill say that it should have criteria that says that there is a thorough analysis presented so that they can decide whether LCHIP land should be used or not. That thorough analysis never got to the Environment Committee and I asked for it. I even asked how much the project was going to cost? I never got it until off the side. I realize now that it is a \$30 million plus project and we are talking about \$1 million to save LCHIP land. I am not in favor of the bill. I am in favor of pump houses. I am not in favor of the bill and I think that the public good is served, if they are going to spend \$30 million, they can spend \$31 million and have it done right. Thank you very much Mr. President.

SENATOR JOHNSON: Thank you Mr. President. I certainly share Senator Barnes concerns on the perpetuity issue. If this were in a private estate or something of that nature, I certainly would be concerned. But this is a public utility ownership that came out of a bankruptcy and I think that does make a difference. I want to...my main concern though is the letter that Senator Barnes read from the New Hampshire Lakes Association. All that I have to say relative to that letter is that I think that there are some people out there who have a concern about our relationship with lobbyists...lobbyists relationship with the legislative body. I don't happen to share that concern because...and I think that this is an example of it. I think that the New Hampshire Lakes Association was 110 percent correct on SB 106 which was the jet ski, personal watercraft, waterborne chain saw, law. I think that they are 100 percent correct, 110 percent, but on this particular issue, I think that they are wrong. Thank you.

SENATOR BARNES: Senator Johnson, would you believe that I have heard your comment, and I have heard it several times as we have discussed this, you and I on the side have discussed this piece of legislation, about well this isn't about Grandma Moses didn't...and these are my words not your words, Grandma Moses didn't give this land to LCHIP, it is coming from a public utility. But don't you agree that perception is nine-tenths of the battle sometimes, Senator? And don't you see someone sitting out there hearing about what we are trying to do here today, saying, oh, my God, why should I give grandpa's land even though, it is true, it is public land coming out of this LCHIP, but just the perception of it to the folks out there that might be wanting to give it? Don't you think that could be a problem with some people?

SENATOR JOHNSON: Senator Barnes, I really don't quite agree with that, because if I have 50,000 constituents, and I had 3-5 constituents come and try to influence me on something and that is their perception, am I going to buy into that perception? No, I am not. I am going to do the best that I can to represent the 50,000 constituents that I have.

SENATOR BARNES: Would you believe that I am just trying to protect the LCHIP Program and I think that we are going to destroy it if we do this today?

SENATOR JOHNSON: Would you believe that Public Service of New Hampshire had no comment on this piece of land being taken out of the LCHIP program?

SENATOR BARNES: I certainly would. But I have heard a lot of things over the years up here, Senator, as have you, from Public Service and some of it goes in here and comes out here, and some goes in here and comes out someplace else.

SENATOR JOHNSON: I am sorry to hear that Senator Barnes, I don't feel the same way.

SENATOR D'ALLESANDRO: Thank you Mr. President. I just want to address a couple of things about (A) in perpetuity because that is a great word. It is something that we all respect. We all gave great respect for the LCHIP Program and we want to do it. We should understand that we are taking a portion of a seven-acre parcel and we are putting 30 acres back into the LCHIP Program, so we are preserving land. The Fish and Game Department, which has the oversight, agrees with this plan. They accept this plan. They think that it is a good plan in terms of preservation and the character of the land, etc. I want to address the public good because you know, I have been around here for a while and I have great respect for Senator Barnes and his desire to protect the public. When I was here, we had 3,000 people here in the New Hampshire Hospital that were committed there for the rest of their lives. Some of them didn't belong there. They were there in perpetuity. But, we, as a state, and as a community, said that we did the wrong thing, and we de-institutionalized, because people were dying up there. I visited that place. I also visited the Laconia State School where we sent people for the rest of their natural lives and saw buildings that didn't have windows on them. Kids banging their heads against the wall because we decided they were there for the rest of their lives rather than taking them out. We made a mistake. This doesn't in any way resemble that mistake, but what I am saying is this: Every once in a while the public good has to be looked at. We have an opportunity to save money. Senator Prescott says that "it is a \$30 million project, let's spend \$31." Wow!



A million here, a million there. Who cares about it? Oh my God! A million dollars. Give me a million! I would like it. I would put it in my pocket and walk out of here. Come on, we've got a project that we want to build. We want to put it together so that the most people can be served at the least cost. We have gone through every hoop to make sure that this project conforms to the desires of the LCHIP Program. It is a good project. It is a project that the town council wants. They want the project. They want the water. We want the ability to get the water. We are hung up on this situation. I ask you to look at the big picture. I don't think that we are setting an unreasonable precedent. We want LCHIP preserved. We know how important land is. It is an irreplaceable commodity. By the same token, we want the town of Hooksett to prosper, they want water. This gives an opportunity to get them what they need. Thank you Mr. President.

SENATOR BARNES: Thank you Mr. President. Senator D'Allesandro, would you believe, and this is no disrespect to you because I respect you greatly as I think you know. I think that it is quite a stretch from the State Hospital and up above there in Laconia to the big rubber band you have there, in my opinion, would you believe that? And, would you believe that I talked to the chairman of our committee about this bill, my concerns for this bill, and I said, why don't you talk to the sponsor of the bill and see if we can change the perpetuity language? That is what they did when they moved the people out of Laconia and out of here. The legislature apparently, is what you told me, that is what you did, you changed perpetuity. I said, all you have to do is change the word perpetuity in here and I would be happy to go along with it. But I was told by the chairman that the sponsor wouldn't have any part of that. Didn't want to do that, would you believe?

SENATOR D'ALLESANDRO: I don't...forgive me, and Senator Johnson, I don't ever remember having any conversation that ever resembled that, about perpetuity. I don't think that was ever discussed. I just never had that conversation. I am dumbfounded.

SENATOR BARNES: I apologize, Senator.

SENATOR GATSAS: Senator D'Allesandro, I asked Senator Below the question about insurance for crossing the railroad. Do you think that is a problem for either the state of New Hampshire or a liability, or a liability problem for the town of Hooksett?

SENATOR D'ALLESANDRO: As Senator Below said, the land would be conveyed to the state of New Hampshire. If the state of New Hampshire were to grant the right-of-way or Hooksett were to be granted an opportunity to develop a portion of the area for recreation or etceteras, sure it is a concern. Of course crossing a railroad track is a liability.

SENATOR GATSAS: Thank you Mr. President. I agree with Senator D'Allesandro. The council in Hooksett is in favor of the project and so is the senator from Hooksett. I am in favor of the project. So is the senator from Manchester, one of the three, in favor of the project. Let me give you a little history. I happened to have sat on the Manchester Water Works Commission. I think that it is important that we understand that the Manchester Water Works, if they perceive a profit in any given year, doesn't come back to the city. It stays with them. They have the ability to build. It is probably the best run department that we have in the city of Manchester. I told them that as I was a commissioner and I will continue to tell them that. We passed legislation here last year

that allowed the Manchester Water Works to increase rates up to 15 percent on communities outside the city of Manchester. Does Hooksett have a reduction in rates? No. Does Candia have a reduction in rates? No. So when we start talking about protecting the ratepayer, maybe the ratepayers in the city of Manchester will be protected because there is that 15 percent differential, but the ratepayers in Hooksett will not. So I think that it is interesting that there is a piece of land next door to it. I think that there were people in the audience the other night, when they talked about perpetuity being forever, that are available. I think that I don't have a balance sheet from the Manchester Water Works, but I have an operating and revenue and expense statement from the Manchester Water Works for the years 2001 and 2000 and 1999. The profit from operating...the total operating revenue profit in 1999, \$1,000,013. The operating income in 2000, \$350,000. The operating income in 2001, \$421,000. So I give you those numbers and I agree. A \$30 million project is a lot of money, but when a town council votes 6-2 that they like the project but they don't like the site, that has got to tell you something. I look at every one of you in here, and remind you that yes, I am a member of the Manchester Aldermanic Board and I am a Senator out of Manchester, but there is a community in Hooksett that says please don't do this. So I afford you to remember that maybe you may be asking to please don't do this in the future. Thank you.

SENATOR BELOW: Thank you Mr. President. I am really glad that there is such passionate feeling about this issue because I think that it is one of those most difficult questions that we have faced. I think that we have, a lot of us, maybe all of us have strong support for the LCIP and the new Land, Community, Heritage, Investment Program (LCHIP). We want people to believe that if they make contributions to the state, that in fact the lands will be preserved in perpetuity and held in public trusts. So I think that this is a difficult choice, but I do think that on balance, this is a win-win situation. To be clear, the land was purchased by the state at fair market value from PSNH. It was not a donation. It was purchased for the purpose of creating a public boat access. Had that purpose been developed, more trees would have been cut. More land cleared and more pavement put down than what will happen with this public purpose project. What we are getting out of this is not just the 31 acres and a mile and a quarter of river frontage, up the river, which is certainly of significant conservation value, but we are also going to end up conserving with an easement back to the state, six or six plus of the seven acres. The part that will be developed is the end of the parcel that is bounded on two sides by roads closed to route 3 and on the third side by a shopping center 500' wide. That is where most of the development occurs on the site. It has no expected impact on what is now the value of the site, which is for eagles roosting towards the river, quite a distance from the part nearest route 3. And on balance, I think that this is a net gain, both for LCIP and serving the public purpose, and in fact, the vast majority of this parcel will remain conserved in perpetuity, and if this use is ever...if this public purpose is ever discontinued, the entire parcel will revert back to the state, and we will still have the 31 acres up the river. I would urge an affirmative vote recognizing that this is a difficult decision. I certainly respect those who feel the other way. Thank you.

SENATOR FLANDERS: Thank you Mr. President. I will be very brief. We have been on this for a long time. I have no nickel in this ballgame

because it is Hooksett and it is Manchester. I believe very firmly in home rule. I wish Hooksett had voted the opposite way. I don't know if this project is in a big hurry or not. Is there any way that we can put this thing off and see if there is any compromise that can be made with Hooksett? They made their vote last night. I don't know the circumstances of it. I don't know if it is possible, but is it something that we can think about? If we rerefer and see if Hooksett can talk to Manchester and maybe come out of it that way. I do believe strongly in home rule and they voted no, and I have a real problem with that.

**Question is on the adoption of the committee amendment (0885).**

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Gatsas.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Below, Green, Odell, Roberge, Larsen, Martel, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Boyce, Flanders, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Morse, Prescott.**

**Yeas: 12 - Nays: 9**

**Adopted.**

**Ordered to third reading.**

**Senator Foster Rule #42 on SB 35.**

**SB 144-FN**, relative to the lease agreement between the department of regional community-technical colleges and Pease development authority. Finance Committee. Ought to pass, Vote 6-0. Senator Green for the committee.

**SENATOR GREEN:** Thank you Mr. President. This bill is an extension of a two-year agreement between the Pease Development Authority and the community technical college. The agreement will expire in June of this year. The agreement treats the rental cost the college uses at Pease as a credit against the bond debt that Pease owes to the state. Because of its location, the center has been extremely effective at securing federal grants. We are in the process, as the result of discussions in the Finance Committee with looking at, not the agreement, we don't have any problem with the agreement, but the bonding issue dealing with Pease. With that in mind, I would move that we table this at this time.

#### **MOTION TO TABLE**

**Senator Green moved to have SB 144-FN laid on the table.**

**Adopted.**

#### **LAID ON THE TABLE**

**SB 144-FN**, relative to the lease agreement between the department of regional community-technical colleges and Pease development authority.

**SB 148-FN**, relative to the regulation of water treatment equipment installers by the plumber's board. Finance Committee. Ought to pass, Vote 6-0. Senator Green for the committee.

SENATOR GREEN: Thank you Mr. President. I move that SB 148 ought to pass and be approved by the Senate. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 159-FN**, relative to milfoil and other exotic aquatic weeds. Finance Committee. Rerefer to committee, Vote 6-0. Senator Green for the committee.

SENATOR GREEN: Thank you Mr. President. Could I have a recess at this time please?

**Recess.**

**Out of recess.**

SENATOR GREEN: Thank you Mr. President. I move that SB 159 be rereferred to the committee at this time. The committee felt that this bill could have a negative impact on the image of our state as a tourist-friendly state. Charging higher fees for out-of-state boaters will likely result in other states reciprocating their fees toward New Hampshire boaters. Additionally, there seems to be several programs already in place that will provide funding for awareness programs aimed at decreasing the presence of milfoil and other related weeds in our state's waters. Until further research is conducted into these two concerns, the committee feels it is appropriate to rerefer the bill for the time being. Thank you Mr. President.

SENATOR BELOW: Thank you Mr. President. I would urge defeat of the rerefer motion so that we could take up ought to pass and consider a floor amendment that would be offered by Senator Odell, Senator Johnson and I, which corrects the problem that we ran into when we were discussing it in Finance, which is, there appears to be a reduction in revenue to the navigation safety fund. That was simply because there was an error in the redrafting of the bill the last amendment in the committee, that accidentally put in \$2 instead of \$4 in terms of the amount of the access fee that would go towards the navigation safety fund. The floor amendment would correct that so that there would be no loss of revenue for that fund or any other fund. In fact, that there would be an increase, significant increases in revenue for all of the funds. I would urge defeat of rerefer.

SENATOR BOYCE: I rise in opposition to the rerefer. I believe that we do have a problem with milfoil in our lakes and we also have a problem with enforcement of the boating regulations on our lakes and a big part of that is because we have people coming from out of state, with out-of-state boats and there is no fee that they have to pay for these functions. I believe that we ought to do this. It is my belief that other states have done the same thing to people going from our state to theirs. I believe that there is a net in-migration of boats, not out-migration. We have a nice big lake that Senator Johnson and Senator Kenny and I all share that seems to be a big drawing card for boats. Lots of people come from out-of-state with boats. I am not sure how many people go from here to other states with their boats. We do need to have this. When we did enact the bill a couple of years ago, last year maybe, dealing with milfoil, it put an increase in the registration for in-state boats to pay for milfoil. Now I frankly don't believe that milfoil is being brought into the state by people who have their boats here. I believe that milfoil is being brought into the state by people who have their boats elsewhere. So

I think that rather than continue to tax our own residents for cleaning up something that is caused by people from out-of-state, we should instead make it so that there is this fairness issue. This would put the same fee on the out-of-state boaters as it does the in-state boaters for bringing their boats into our lakes. I think that we ought to do this. So I will vote against rerefer. Thank you.

SENATOR PRESCOTT: Thank you Mr. President. I know that I would, as a person who uses our lakes, would like to see the lakes maintained as pristine as possible, fighting milfoil and I would also like to be having them as safe as possible. I think that this bill will accomplish that. I rise to defeat the rerefer and have a motion that would be ought to pass if we get to that point.

SENATOR CLEGG: I rise in favor and in support of the rerefer. I was out in the hallway with John Stevens, Deputy Commissioner of Safety and asked him if an amendment would clear up everything or all of the fiscal problems? It would clear up one and raise a little bit of money, but would still leave them short for enforcement. So while we do that, we will have to find some more money so that they can enforce what this bill does. Now rerefer allows us time to clean up that problem. As I understand it, from what I have seen in the amendment, the amendment doesn't have this go into effect until January of 2003. So if we take care of it this summer...I am sorry, 2004. Thank you Senator. It must have been that I was lacking cookies. My sugar level is dropping. I need cookies. I am all set now. So it won't go into effect until January of 2004, if we worked on it this summer, fixed all of the problems, some of us are still confused over what all the problems are, you could have it go into effect immediately upon passage and still accomplish what it is that you are trying to accomplish today. So I would favor rerefer so that everyone feels comfortable in what we are doing. Thank you.

SENATOR JOHNSON: Thank you Mr. President. I don't know what the confusion is with the Department of Safety, we have the figure here of \$86,000 and I think that is an amount that was doubled from what the other fiscal note said, and that was the major problem. I just want to say that a big part of this bill is education. The education is for the out-of-state boaters. Maine, in their wisdom, in the last session, they passed a similar bill and they are charging \$10 for an in-state boat for an environmental sticker and \$20 for an out-of-state boat. So I think that it is time that we should do this, we shouldn't wait because if we wait, they are still going to have to have a number of months to get the program started and get it underway and get everything in place. So I think that if we can get it out here and get it over to the House and get it passed, then we can get on with the program. Thank you.

SENATOR BARNES: Thank you. Senator Johnson, isn't this another one of those bills that the Lakes Association is working really hard on to make things right in this state?

SENATOR JOHNSON: They agreed with this bill.

SENATOR BARNES: Thank you.

SENATOR GATSAS: Thank you Mr. President. Senator Johnson, correct me if my memory is wrong, but didn't we just last year, increase those rates on the in-state boaters and there was never a mention about fees about out-of-state boaters and now we are reducing those fees to in-state boaters and putting in new fees for out-of-state boaters?

SENATOR JOHNSON: That is correct. We are taking the in-state boaters and reducing the registration fee and then making the impact...the environmental impact sticker to compensate for that, so that is a neutral thing for the in-state boaters. There is no increase in their fees, in the total fees. The out-of-state boaters will pay that impact sticker fee.

SENATOR GATSAS: Clarification question. But the fees that we are now reducing, were not those fees that we increased last year?

SENATOR JOHNSON: We had an increase last year. That is correct.

SENATOR GATSAS: To take care of this and now we are reducing those fees and charging a fee to the out-of-state?

SENATOR JOHNSON: The fee that we are charging the out-of-state boaters is for, a big part of it is for the education of the out-of-state boater to have them realize that we are concerned about milfoil and exotic weeds as well as safety.

SENATOR GATSAS: Thank you.

SENATOR BOYCE: Senator Johnson, I just want to make sure that I am clear on what Senator Gatsas was asking you and the answer that you gave him. Isn't it that the fees that were raised last year are being reduced for in-state boaters this year, in this bill; however, there is this new fee that the in-state boaters will have to pay, which equals the amount that in-state registration is being reduced? So if an in-state boater, the fees that were raised last year, will be the same amount that they are paying under this. Is that correct?

SENATOR JOHNSON: That is correct.

SENATOR BOYCE: So what we did last year, we raised only the fees for in-state boaters and this year we are saying that we are going to make it fair and make it across the board and all of the boaters have to pay the fee, and to do that, we are reducing the in-state boaters registration fee and increasing the out-of-state, making everybody pay this new fee. So we have a two-part fee where we used to have one?

SENATOR JOHNSON: That is right.

SENATOR BOYCE: This two-part fee, one part is paid for by everybody and the other part is paid only by the in-state instead of the current situation where only the in-state pays the whole fee?

SENATOR JOHNSON: Yes. And as you know with reciprocity, the out-of-state boats come in and they are supposed to be here only for 30 days and they are here...and nobody is checking whether they are here for 30 days or 30 years, so we have to get a handle on those boats that are coming in from out-of-state and educate them about the safety issues and the water. Thank you.

SENATOR BOYCE: Thank you.

SENATOR GATSAS: Senator Boyce, wouldn't you agree with Senator Clegg that this topic is so confusing that the question that I asked, that you asked of Senator Johnson for a clarification, now I am totally confused?

SENATOR BOYCE: I believe that you might be confused, but I don't believe that it is that complex of a situation. I believe that I understand it completely and I am in favor of passing this bill without dawdling for another year. Thank you.

SENATOR GREEN: As many of you know, recently I asked for a recess to get direction. Well I still don't have direction, but I am going to make a couple of comments anyway. What is part of my confusion now is I have a vote from my committee of 6-0 to rerefer and I have had three of them stand up and tell me that they are against the motion. So now I am thoroughly confused. What happened on the way to the park? Thank you.

SENATOR BELOW: Senator Green, would you recall that perhaps when we were discussing this bill in committee, we recognized that there was a problem, but you indicated that there was no time left to run out and get an amendment and that we needed to act on it posthaste?

SENATOR GREEN: And that was true at the time.

SENATOR BOYCE: And would you believe that some of us felt that we should do an amendment but we simply couldn't do it in committee so we just wanted to not end up on a 3-3 vote in committee with no way to bring it back to the floor.

SENATOR GREEN: I agree, with a rudder I could do some circumventing very well. Thank you.

SENATOR ODELL: Thank you Mr. President. Senator Green, I will be the fourth member of the committee that voted for rereferral that will be supporting the nonrereferral motion.

**Question is on the committee report of rerefer.**

**A division vote was requested.**

**Yeas: 9 - Nays: 13**

**Motion failed.**

**Senator Green moved inexpedient to legislate.**

**Question is on the motion of inexpedient to legislate.**

**A roll call was requested by Senator Green.**

**Seconded by Senator Below.**

**The following Senators voted Yes: Gallus, Green, Flanders, Clegg, Gatsas, D'Allesandro, Morse.**

**The following Senators voted No: Johnson, Kenney, Boyce, Below, Odell, Roberge, Peterson, O'Hearn, Foster, Larsen, Barnes, Martel, Estabrook, Prescott, Cohen.**

**Yeas: 7 - Nays: 15**

**Motion failed.**

**Senator Barnes moved ought to pass.**

Senator Odell offered a floor amendment.

Sen. Odell, Dist. 8

Sen. Below, Dist. 5

Sen. Johnson, Dist. 2

**April 9, 2003**

**2003-1240s**

**06/09**

### **Floor Amendment to SB 159-FN**

Amend RSA 270-F:5, V as inserted by section 4 of the bill by replacing it with the following:

V. \$4 for each permit required by this section shall be paid into the navigation safety fund established under RSA 270-E:6-a.

Amend the bill by inserting after section 12 the following and renumbering the original sections 13-14 to read as 15-16, respectively:

13 Disposition of Revenues. Amend RSA 270-E:7 to read as follows:

I. Except as provided in paragraph II, all fines collected under this chapter and the amount of fees generated by RSA 270-E:5, I and III **and \$4 of each fee generated by RSA 270-E:5, II(b)** shall be deposited in the navigation safety fund established under RSA 270-E:6-a.

II. All fees collected under RSA 270-E:5, I and III **and \$4 of each fee generated by RSA 270-E:5, II(b)** for vessels registered for tidal and coastal waters shall be made available to the Pease development authority, division of ports and harbors for the purposes of safety, navigation, training, and administration. Such sums shall be nonlapsing and shall be continually appropriated to the Pease development authority, division of ports and harbors.

14 Disposition of Revenues. Amend RSA 270-E:7 to read as follows:

I. Except as provided in paragraph II, all fines collected under this chapter and the amount of fees generated by RSA 270-E:5, I and III shall be deposited in the navigation safety fund established under RSA 270-E:6-a.

II. All fees collected under RSA 270-E:5, I and III for vessels registered for tidal and coastal waters shall be made available to the Pease development authority, division of ports and harbors for the purposes of safety, navigation, training, and administration. Such sums shall be nonlapsing and shall be continually appropriated to the Pease development authority, division of ports and harbors.

Amend the bill by replacing paragraph I of section 16 with the following:

I. Sections 3, 6, 8, 10, 12, 14, and 15 of this act shall take effect January 1, 2008.

SENATOR ODELL: Thank you Mr. President. I rise to offer a floor amendment. This is simply an amendment to clarify and to make appropriate the confusion...to clarify the confusion that we had in the committee. Hopefully this amendment will take care of that.

SENATOR BELOW: I would just like to further clarify the floor amendment. The problem that occurred in Fiscal is that what we did in the Environment Committee amendment is that we reduced the registration fees by \$4. We took a number of surcharge fees that go into these specialty funds for lake restoration and milfoil prevention, and those were surcharged on top of the registration fee, and we made them part of the Water Permit Access Fee. And we also thought that we were putting the \$4 that we charge for registration fees, into that access fee, and directed it back into the navigation safety fund because that is where the registrations go now. But accidentally that was \$2 instead of \$4, so line 3 of the amendment makes it \$4. So in fact, the Navigation Safety Fund will get all of the dollars that are collected now from in-state registration between that and the Water Permit Access Fee, will pay the same amount towards the Navigation Safety Fund. In addition, we will be collecting \$4 from all of the out-of-state boaters that goes into the Navigation Safety Fund, all those that purchase the Water Permit Access Fee. The other provisions of this amendment simply bring other provisions that talk about the disposition of the revenues in-line with what we have done with the rest of the bill which is to pull the right amount from the right places, back into the Navigation Safety Fund. That is section 13...the first part of 13, I. Thirteen, II addressed \$4 from each fee generated for a special fee for tidal and coastal wa-



ters and keeps that going to the Division of Ports and Harbors just as it does now. So it just keeps them whole. Finally, this section 14 of the bill, is sort of a reverted clause because the whole bill is set up so that it only operates for a period of time. It reverts back to current law in 2008. That is part of the underlying bill. So section 14 just goes back to essentially, the current statutory language. So that is a little confusing, but the bottom line is what this achieves is that the in-state boaters pay the same fees. There are some coastal title boaters that actually see a small break compared to current law, but we will make this back up and quite a bit more, and I think that maybe Senator Johnson will speak to some of the revenue impacts. We will make it up with the Water Permit Access Fee from out-of-state boaters. There has been a concern about additional and potential...additional enforcement costs from safety. I believe that we made the bill coming out of the Environment Committee so it is a secondary offense, so we are not asking safety to go out and look to see whether people have these access permit fees or not. I think this amendment makes the bill ready to go forward and puts us in a position of doing more to protect our lakes and educate out-of-state boaters and have them participate in the costs. Thank you Mr. President.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**Recess.**

Senator Kenney in the Chair.

**HB 101**, relative to qualifications for state offices. Internal Affairs Committee. Ought to pass, Vote 3-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move HB 101 ought to pass. House Bill 101 takes existing constitutional qualifications for holding elected offices and places them in statute. This does not change the qualifications for office; it merely restates what our constitution already says. The Secretary of State came in, asked that we do this because it will allow them to print on the form, for filing for office, the constitutional requirements for running for those offices. Currently it simply refers to this statement in the Constitution. This will allow them to have it more clear to the people running for office what the qualifications are. I understand that there will be a floor amendment. I recommend that this be passed and adopted. Thank you.

Senator Eaton offered a floor amendment.

Sen. Eaton, Dist. 10

Sen. Below, Dist. 5

Sen. Boyce, Dist. 4

Sen. Barnes, Dist. 17

Sen. Clegg, Dist. 14

Sen. Cohen, Dist. 24

Sen. D'Allesandro, Dist. 20

Sen. Estabrook, Dist. 21

Sen. Flanders, Dist. 7

Sen. Foster, Dist. 13

Sen. Gallus, Dist. 1

Sen. Gatsas, Dist. 16  
Sen. Green, Dist. 6  
Sen. Johnson, Dist. 2  
Sen. Larsen, Dist. 15  
Sen. Martel, Dist. 18  
Sen. Morse, Dist. 22  
Sen. O'Hearn, Dist. 12  
Sen. Odell, Dist. 8  
Sen. Peterson, Dist. 11  
Sen. Prescott, Dist. 23  
Sen. Roberge, Dist. 9  
Sen. Sapareto, Dist. 19

**April 8, 2003**  
**2003-1207s**  
**03/04**

### **Floor Amendment to HB 101**

Amend the title of the bill by replacing it with the following:

AN ACT relative to qualifications for state offices and relative to vacancies in public offices.

Amend the bill by replacing all after the enacting clause with the following:

1 Elections; Nominations; Qualifications by Office. Amend RSA 655:5-655:8 to read as follows:

655:5 Governor. To hold the office of governor, a person must be qualified as provided in Part 2, Article 42 of the state constitution: ***at the time of the election, the person must have been an inhabitant of this state for 7 years next preceding, and be of the age of 30 years.***

655:6 Councilor. To hold the office of councilor, a person must be qualified as provided in Part 2, Article 61 of the state constitution: ***the person must be of the age of 30 years, and shall have been an inhabitant of this state for 7 years immediately preceding the election, and at the time thereof shall be an inhabitant of the district for which he or she shall be chosen. Should such person, after election, cease to be an inhabitant of the district for which he or she was chosen, he or she shall be disqualified to hold said position and a vacancy shall be declared therein.***

655:7 State Senator. To hold the office of state senator, a person must be qualified as provided in Part 2, Article 29 of the state constitution: ***the person must be of the age of 30 years, and shall have been an inhabitant of this state for 7 years immediately preceding the election, and at the time thereof shall be an inhabitant of the district for which he or she shall be chosen. Should such person, after election, cease to be an inhabitant of the district for which he or she was chosen, he or she shall be disqualified to hold said position and a vacancy shall be declared therein.***

655:8 State Representative. To hold the office of state representative, a person must be at least 18 years of age and must be qualified as provided in Part 2, Article 14 of the state constitution: ***for 2 years, at least, next preceding the election shall have been an inhabitant of this state; and shall be, at the time of the election, an inhabitant of the town, ward, place, or district he or she may be chosen to represent, and shall cease to represent such town, ward, place, or district immediately on his or her ceasing to be qualified as aforesaid.***

2 Elections; Vacancy. Amend RSA 652:12 to read as follows:

652:12 Vacancy. A "vacancy" shall occur in a public office if, subsequent to his *or her* election and prior to the completion of his *or her* term, the person elected to that office:

I. Either dies, resigns, or ceases to have domicile in the state or the district from which he *or she* was elected; or

II. Is determined by a court having jurisdiction to be insane or mentally incompetent; or

III. Is convicted of a crime which disqualifies him *or her* from holding office; or

IV. Fails or refuses to take the oath of office within the period prescribed in RSA 42:6 or to give or renew an official bond if required by law; or

V. Has his *or her* election voided by court decision or ballot law commission decision; or

VI. Is a member of the general court of New Hampshire and a member of a military reserve or national guard unit; and

(a) [~~Such unit~~] *The member* was called to serve in an emergency; and

(b) Service in such unit causes the member to be unable to perform his *or her* legislative duties, *as determined by the house of representatives in the case of a member of the house of representatives and by the senate in the case of a member of the senate*, for longer than 180 consecutive days; and

(c) The selectmen of any town or ward in the district from which the member is elected request of the governor and council that the office be declared vacant.

3 Effective Date. This act shall take effect upon its passage.

**2003-1207s**

### AMENDED ANALYSIS

This bill codifies certain constitutional qualifications for state elective offices. This bill also requires that the house of representatives or the senate determine that a member is unable to perform his or her legislative duties because of service in a military reserve or national guard unit in order for such service to create a vacancy. This bill also makes certain gender-neutral changes.

SENATOR EATON: Thank you Mr. Acting President. I would like to move the adoption of floor amendment 1207 and would like to speak to it as it is being passed out. House Bill 101 clarifies state law as was just explained. This amendment does the same thing for vacancies in the office of state Representative or state Senator. It clarifies current state law, RSA 652:12 by restating existing constitutional provision that the House and the Senate respectively, shall be the final judges of the qualifications of their own members. This amendment does not change the criteria for a vacancy in office, it merely clarifies who will be the judge of when a member is unable to perform their legislative duties. This is a simple amendment, but one which I think will preserve the integrity of the General Court and which should put an end to the questions about the status of one of our members. I would also like to note that there are 23 members who have signed onto this amendment. Thank you.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Clegg.**

**The following Senators voted Yes: Gallus, Johnson, Boyce, Below, Green, Flanders, Odell, Roberge, Eaton, Peterson, O'Hearn, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, D'Allesandro, Estabrook, Morse, Prescott, Cohen.**

**The following Senators voted No: None.**

**Yeas: 22 - Nays: 0**

**Floor amendment adopted.**

Question is on the adoption of the bill as amended.

**Adopted.**

**Ordered to third reading.**

SENATOR KENNEY (In the Chair): Thank you very much. I really mean that in all sincerity. I will look forward to working back here with you all very soon.

**Recess.**

Senator Eaton in the Chair.

SENATOR EATON (In the Chair): I would like to thank the full body for the show of great bipartisanship on that. Senator Kenney, as you know, we wish you the best. Thank you for doing such a good job up here.

SENATOR BARNES: Thank you Mr. President. I would like to rise and thank you for taking care of this amendment, getting this started and getting it put together. I think it is another great day for New Hampshire that this happened.

SENATOR EATON (In the Chair): I also thank you for your help with this bill. Thank you.

**SB 214-FN-A**, establishing new positions in the department of health and human services and making an appropriation therefor. Finance Committee. Ought to pass, Vote 5-1. Senator Below for the committee.

SENATOR BELOW: Thank you Mr. President. I move that SB 214 ought to pass. This bill would authorize the creation of 60 new positions within the Division of Children, Youth and Families so that the state of New Hampshire would improve its ability to adequately respond to the needs of abused and neglected children in a timely and appropriate fashion. In 1991 a class action lawsuit called Eric L. was filed against the state, asserting that the state was failing to meet its obligations under state and federal law to protect and serve abused and neglected children. A settlement was reached that requires the state to make progress in a series of areas, some of which have been achieved. Last year, a new proposed settlement of outstanding issues called for, among other things, the establishment of these 60 new positions in the Bureau of Child and Families and Foster Care Health Program. As the Finance Committee expects to deal with this within the budget, I would now like to move that SB 214 be laid on the table.

### **MOTION TO TABLE**

Senator Below moved to have **SB 214-FN-A** laid on the table.

**Adopted.**

### **LAIID ON THE TABLE**

**SB 214-FN-A**, establishing new positions in the department of health and human services and making an appropriation therefor.

**SB 217-FN**, relative to the calculation of average daily membership in residence for the purpose of calculating the cost of an adequate education. Finance Committee. Inexpedient to legislate, Vote 5-2. Senator Green for the committee.

### **MOTION TO TABLE**

Senator Green moved to have **SB 217-FN** laid on the table.

**Recess.**

**Out of recess.**

**Question is on the motion to table.**

**A roll call was requested by Senator Below.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Morse, Prescott.**

**The following Senators voted No: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 15 - Nays: 6**

**Motion is adopted.**

### **LAIID ON THE TABLE**

**SB 217-FN**, relative to the calculation of average daily membership in residence for the purpose of calculating the cost of an adequate education.

**SB 221-FN**, relative to the offense of obstructing government administration by the use of simulated legal process. Finance Committee. Ought to pass, Vote 6-0. Senator Boyce for the committee.

**SENATOR BOYCE:** Thank you Mr. President. I move **SB 221** ought to pass. This bill defines "simulated legal process" as well as provides penalties for committing the offenses of obstructing government administration through the use of this process. This will have minimal fiscal impact. Please join the Finance Committee in voting this bill ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**SB 222-FN-A**, relative to motor vehicle fees. Finance Committee. Ought to pass with amendment, Vote 5-1. Senator Green for the committee.

**Senate Finance**

**April 2, 2003**

**2003-1086s**

**03/01**

### **Amendment to SB 222-FN-A**

Amend the bill by replacing section 2 with the following:

2 New Paragraphs; Emission Control Equipment; On-Board Diagnostic and Vehicle Safety Inspection Program. Amend RSA 266:59-b by inserting after paragraph IV the following new paragraphs:

V. The director shall, with the approval of the commissioner, adopt rules pursuant to RSA 541-A relative to:

(a) The efficient administration of this section.

(b) Reasonable fees to cover the operation of an approved electronic on-board diagnostic and vehicle safety inspection program. All fees collected pursuant to this subparagraph shall be deposited in the highway fund.

VI. The department of safety shall submit an annual report, beginning on July 1, 2004, to the speaker of the house of representatives, the president of the senate, and the governor and council which shall include, but not be limited to, a description of inspection services offered by the electronic on-board diagnostic and vehicle safety inspection program, the development of the technological advancements in division programs related to the vehicle safety inspection process, the revenue generated from the fees established in RSA 266:59-b, V(b), the degree of coordination with vehicle inspection stations, and the extent to which the vehicle inspection safety program is enhanced.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 5:

3 Appropriation. The sum of \$925,859 for the fiscal year ending June 30, 2004 and \$999,479 for the fiscal year ending June 30, 2005 are hereby appropriated to the department of safety for the purpose of funding the expenses of operating the electronic on-board diagnostic and vehicle safety inspection program established pursuant to RSA 266:59-b. Said appropriations shall be a charge against the highway fund to be expended as follows:

	<u>FY 2004</u>	<u>FY 2005</u>
Personal services - permanent	\$ 354,964	\$ 491,494
Overtime	\$ 24,366	\$ 37,566
Current expenses	\$ 75,067	\$ 86,850
Organizational dues	\$ 1,000	\$ 1,000
Equipment new/replacement	\$ 295,830	\$ 137,415
Benefits	\$ 140,352	\$ 195,754
In-state travel	<u>\$ 34,280</u>	<u>\$ 49,400</u>
Total	\$ 925,859	\$ 999,479

4 Positions Established. There are hereby created within the department of safety the following new positions:

I. Six full-time highway patrol officers, at labor grade 19, for the fiscal year ending June 30, 2004.

II. Three full-time highway patrol officers, at labor grade 19, for the fiscal year ending June 30, 2005.

III. One program specialist II, at labor grade 21, for the fiscal year ending June 30, 2004.

IV. One auditor II, at labor grade 21, for the fiscal year ending June 30, 2004.

V. Two secretaries II, at labor grade 9, for the fiscal year ending June 30, 2004.

SENATOR GREEN: Thank you Mr. President. I move SB 222 ought to pass with amendment. I understand also that there will be a friendly amendment after, if we approve this from Senator Boyce. I would actually concur with that friendly amendment. This bill will provide funding for the administration of the state's Electric Motor Vehicle On-Board Diagnostic Emission and Safety Inspection Program by increasing motor vehicle registration fees. The OVE Program is a requirement of the federal Clean Air Act, failure to comply completely to implement this agreement would take New Hampshire in violation of federal regula-

tions. The committee amendment requires that all fees collected will be deposited in the state Highway Fund. Please join me in voting this bill ought to pass. Thank you.

**Amendment adopted.**

Senator Boyce offered a floor amendment.

Sen. Boyce, Dist. 4

**April 2, 2003**

**2003-1103s**

**03/10**

**Floor Amendment to SB 222-FN-A**

Amend the title of the bill by replacing it with the following:

AN ACT relative to motor vehicle fees and prohibiting the sale of gasoline containing MTBE.

Amend the bill by inserting after section 4 the following and renumbering the original section 5 to read as 6:

5 New Section; Sale of Gasoline Containing MTBE Prohibited. Amend RSA 485 by inserting after section 16-d the following new section:

485:16-e Sale of Gasoline Containing MTBE Prohibited.

I. Gasoline containing MTBE shall not be sold in this state.

II. Retail sellers of gasoline and the suppliers to such retail sellers shall comply with the provisions of paragraph I or be subject to the enforcement provisions of RSA 485:58.

**2003-1103s**

**AMENDED ANALYSIS**

This bill:

I. Inserts provisions for the administration of the electronic on-board diagnostic and vehicle safety inspection program.

II. Increases registration fees for motor vehicles.

III. Prohibits the sale of gasoline containing MTBE.

SENATOR BOYCE: I rise to offer a floor amendment. I will speak to it while it is being passed out. This amendment is a statement to the EPA that okay we will take your current mandate as long as we have to do this, but we are going to undo one of the ones that you screwed up for us. We all know about MTBE and how it is affecting the water in our lakes and our wells. That was forced on us by the EPA and passed. The EPA has told us that if we don't do this they are going to take away our highway funds, which is the same reason that we passed the measures that implemented the sale of reformulated gasoline containing MTBE. So what this does is simply ties this to the bill that we passed last year, which said that we would sell reformulated gas in areas of the state that was not required. This explains that and says that gasoline containing MTBE shall not be sold in this state. The effective date of that is the same as the effective date as the other part of this legislation. So as soon as we implement this new inspection program, we will be saying that we will not be selling MTBE and pollute our water system. It does tie into the penalty that was in that bill that we passed last year about distributing MTBE, reformulated gas in areas of the state that did. It simply has the same portion provision, and it also has, in that section, there is an escape valve that says that...I forget how it exactly goes, but it allows the refiners to have the option of selling the reformulated or non-reformulated gas with MTBE in it, if there is a shortage of that MTBE

free gasoline. So it keeps us out of the situation that Chicago found themselves in a couple of years ago where they needed a particular blend of gasoline that was mandating by the EPA by the way, and the stocks of that gasoline were not available, and because of that, the gasoline prices went through the roof around \$2.50. That prevents that from happening, but I believe that it sends a clear message to the EPA that we are just not going to accept their old mandate which was not good. We are polluting our water by trying to clean the air. I think that they screwed up and won't admit it. I want us to admit it and tell them that we are done with it. So I would like you to pass this amendment.

SENATOR BELOW: Senator Boyce, if I understood it, most all gasoline refined and sold in the United States has some MTBE in it, even the **TAPE INAUDIBLE** gas contains some MTBE. It may contain some simply by being in a tank or pipeline that had a product in it that had MTBE. In fact, I think that they add it to most forms of gasoline. How does this not create a complete void in the market of gasoline in New Hampshire? How...this says that gasoline containing MTBE shall not be sold in the state. How could this not mean that we are not going to have any gasoline for incredibly high prices for refiners that don't make it without MTBE in it?

SENATOR BOYCE: Refiners can make it without MTBE and I am not sure that there aren't places in the country where it is not or definitely not containing MTBE is not already for sale. I know that Maine has wished to get rid of it out of their gas, and I am hoping that if we pass this that they will do the same and get rid of it there, which will create a larger market for the non-MTBE in gas. There was also a bill that passed through the federal...passed through congress that did something changing the reformulated gas formula and allowing MTBE to be taken out. I know that Senator Smith worked on that. I believe that did happen. But what the bill drafter told me when he did this, was that by doing it the way that he has done it here, tying it into what we did last year where we made it clear that we didn't want reformulated gas sold in Belknap, in Carroll and Coos and the other counties that don't require it, by tying it into that segment of the RSA's, that this would not have the effect of causing us to have a special protein blend, only that, and that the intention was that we would be able to let the refiners sell off what is available, but our preference is to have none

SENATOR BELOW: I don't understand where it says that? It says "Retail sellers of gasoline and the suppliers to such retail sellers shall comply with the provisions of paragraph I or be subject to the enforcement provisions of RSA 485:58." That's an enforcement provision it's not an exception provision. My question is as I understand the recent law takes precedent over older law. For if outright, it could go to \$10 a gallon or whatever.

SENATOR BOYCE: I have put my faith in the bill drafter of this one. I believe that what he has done there was the enforcement in 485:58, which contains language which we put in there, with enforcement that they could sell...the situation on that bill that we passed last year was that if they couldn't deliver non-reformulated gas to counties...the only way that they could do that...they could deliver the reformulated gas to those counties, if that was all that they had. That is why he has tied it into that. The enforcement says that you won't be punished if you do it, there is nothing else that you can do. That is what he assured me it does.



SENATOR GATSAS: Senator Boyce, the last question I asked you, I was confused, I am glad the drafter that drafted this isn't confused. This could be a shock for the system for every retailer that goes to a gas pump, because if this implies that they have to comply, that gas is \$3 and \$4 a gallon, we will have done something to the state of New Hampshire that we really didn't intend to do, if he was confused?

SENATOR BOYCE: My answer to that is I will be very careful what the House does I will make sure when this gets over to the house and they rethink that more thoroughly.

SENATOR GATSAS: Senator, don't you think that it is our job here in the Senate to make sure that something is right before we send it to the House?

SENATOR BOYCE: If this was not crossover day, I would say let's hold on to it for another couple of days and do it right but since I have an ally in the house that I can proxy.

SENATOR GATSAS: Wouldn't it make more sense to kill this amendment and see if you could fix it in the house properly?

SENATOR BOYCE: I would rather send a statement from the Senate that we don't want MTBE in our water and lakes any more and that is the statement that I would like to send, and we can fix the technical details we need to in the House.

SENATOR LARSEN: I would like to support this amendment. I am absolutely amazed. I guess if you stay around here long enough that you see things come full circle, because we did see this bill last session, as I recall Senator Katie Wheeler brought this bill in and it is interesting to see that...and I am in full agreement. We all know the dangers of MTBE in our water. We need to encourage a regional rejection of gasoline containing MTBE, perhaps if the region moves in that direction, there will be greater availability. The one concern of course is the argument that you all made to us when we proposed this, which was the delivery in fact, would they be able to deliver MTBE free gasoline to New Hampshire and really is something which perhaps we will have explore with the House. I say that it is a strong policy statement. It will clean up our water and vote yes on this. I would also like to speak to the body of the bill, in which I have a question of Senator Boyce. Senator Boyce, I had a question regarding the new emission control testing. I have seen a newspaper account that it would raise the registration cost to the individual auto owner, perhaps in the \$2.40 range. Is that what you understood or did you ever see an exact number because over the years there have been great concern that the emission testing will cause many people to have difficulty paying their auto registration?

SENATOR BOYCE: I believe that it would be more than two dollars. There will be a new impression cost and I don't believe that it will affect that two dollars figure I believe. **TAPE INAUDIBLE**

SENATOR LARSEN: So you are confirming that the cost for the vendor is an increase of about \$2.40 per test? So whenever you see a \$50 add-on, you can say "that is not what I understood for the process to do?"

SENATOR BOYCE: I am not exactly clear on that – the cost to the vender station, I really don't remember if there is that \$2.50 cost. It may be more than that.

SENATOR LARSEN: Perhaps we could hear from another member of the Senate who know their figures?

SENATOR BELOW: I rise to disagree with my Caucus leader. This may seem like a good thing to do, I mean, we all feel good about it and we would all love to see MTBE out of our gasoline, but I think as a practical matter this could prove to be a very irresponsible thing to do. The totally practical thing to do, I have just been told, trust me, trust the bill drafter...that this reference to 485:58 means that we are not going to end up with gasoline in New Hampshire. When I look in here at the statute, which I have checked the pocket and 485:58 is the enforcement and penalty provision of the state drinking water act. I will be darned if I can find anything here that talks about the validity of the price of gasoline or any waivers or penalties because of that. If you go back to 485:16-d, it talks about the commissioner of Health and Human Services being able to ...no, the Commissioner of Environmental Services, after consultation with the Commissioner on Health and Human Services, be able to limit, with approval, of Governor and Council, the concentration of MTBE allowed in gasoline sold in all or part of the state. After first holding a public hearing, and complying with the Air pollution Advisory Committee, having such limits would limit the readily availability to New Hampshire consumers at a reasonable price of gasoline. Like I said, I think that this kind of major policy should be made only after a public hearing, and only after advanced notice and consideration of the implications, so we don't do something foolish. I think that the implications of this, if it were to become law, would be to say that we aren't going to have gasoline in New Hampshire this summer, starting July 1 or we aren't going to have anything resembling a reasonable price.

SENATOR GATSAS: Senator Below, two years ago when you were the Chairman of JLCAR, I believe that we heard some rules talking about very cheap gas and what the cost could be if we try to eliminate MTBE 100 percent of what this amendment asks us for. Do you remember those prices?

SENATOR BELOW: I don't. I would love to look them up because I am scared. TAPE INAUDIBLE let the house take care of it. We symbolically have done the right thing for a roll call vote, it looks like it is politically correct, but I don't think that we should be making these kinds of decisions.

SENATOR GATSAS: Senator Below, if I was confused, my fear of the drafter being confused, I don't think we should penalize the people in the state of New Hampshire, wouldn't you agree with me?

SENATOR BELOW: I certainly would agree.

SENATOR GATSAS: Thank you.

**Floor amendment failed.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

### **MOTION TO REMOVE FROM THE TABLE**

Senator Green moved to have **SB 70** taken of the table.

**Adopted.**

**SB 70**, creating the Great Bay Estuary district and making an appropriation therefor.

SENATOR GREEN: Thank you Mr. President. I have an amendment that will be handed out as the results of the discussion that we had in this Chamber last week. Senate Bill 70 deals with finding ways to keep water treatment facilities in the seacoast in compliance with the EPA standards. Currently this bill does two things: It establishes a commission to study implementing a recommendation of the New Hampshire Estuaries Project Management Plan and it appropriates \$1 million for initial planning and design services. There seems to be some consensus to establish the commission that there are concerns about the money. The committee amendment makes it a capital appropriation, but that is not quite the same thing as putting it in the capital budget. The pending motion on SB 70 is ought to pass with amendment. I ask you to vote down the committee amendment so that I can make a motion to offer the floor amendment that will remove the appropriation from the bill, so that the money can be considered in the Capital Budget Committee. Thank you Mr. President.

**Question is on the adoption of the committee amendment (1063).**

**Amendment failed.**

Senator Green offered a floor amendment.

Sen. Green, Dist. 6

**April 9, 2003**

**2003-1225s**

**06/01**

### **Floor Amendment to SB 70**

Amend the title of the bill by replacing it with the following:

AN ACT establishing a commission to study implementing a recommendation of the New Hampshire estuaries project management plan.

Amend the bill by replacing all after the enacting clause with the following:

#### **1 Commission Established.**

##### **I. There is established a commission to study:**

(a) The feasibility of implementing a recommendation of the estuaries project management plan that the discharge from area wastewater treatment plants be combined for discharge further offshore.

(b) Ways to aid in achieving restoration of the estuary habitat in a manner that is compatible with the National Estuary Restoration Act of 2000.

(c) Creation of a watershed district in the Great Bay Estuary area and the rivers that flow into it.

(d) Funding strategies for creating and maintaining effective partnerships between the federal government, the state government, local community governments and the private sector to fund and assist in the Great Bay estuary habitat restoration project.

(e) The need for joint public wastewater facilities for collection and discharge of treated wastewater and ways to achieve the construction, maintenance and management of these facilities.

##### **II. Participation in this commission shall be voluntary.**

#### **2 Membership and Compensation.**

##### **I. The members of the commission shall be as follows:**

(a) One member of the senate, appointed by the president of the senate.

(b) One member of the house of representatives, appointed by the speaker of the house.

(c) One member, appointed by the governor.

(d) One member from each participating town or city along the Great Bay estuary, river basin, and the estuarine watersheds, appointed by the governing body of the town or city.

(e) One member of the Strafford Regional Planning Commission, appointed by the commission.

(f) One member of the Rockingham Regional Planning Commission, appointed by the commission.

(g) One Strafford County commissioner, appointed by the county commission.

(h) One Rockingham County commissioner, appointed by the county commission.

(i) The commissioner of the department of environmental services, or designee.

(j) The reserve manager of the Great Bay National Estuarine Research Reserve.

(k) The director of the office of state planning, or designee.

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

3 Duties. The commission shall study:

I. The feasibility of implementing a recommendation of the estuaries project management plan that the discharge from area wastewater treatment plants be combined for discharge further offshore.

II. Ways to aid in achieving restoration of the estuary habitat in a manner that is compatible with the National Estuary Restoration Act of 2000.

III. Creation of a watershed district in the Great Bay Estuary area and the rivers that flow into it.

IV. Funding strategies for creating and maintaining effective partnerships between the federal government, the state government, local community governments, and the private sector to fund and assist in the Great Bay estuary habitat restoration project.

V. The need for joint public wastewater facilities for collection and discharge of treated wastewater and ways to achieve the construction, maintenance, and management of these facilities.

VI. The merits of forming a watershed district among area towns to provide for the collection, conveyance, and disposal of treated wastewater into the deep waters of the Piscataqua River or the Atlantic Ocean and for other water-related purposes and an appropriate name for any districts recommended.

VII. Funding strategies that a watershed district might use in conjunction with the state and federal governments for the benefit of the Great Bay Estuary and its environment.

4 Notice of First Meeting; Chairperson; Quorum. The senate member shall create a list of commission members and shall call the first meeting of the commission. The members of the study commission shall elect a chairperson from among the members. The first meeting of the commission shall be held within 45 days of the effective date of this act. Eight members of the commission shall constitute a quorum.

5 Report. The commission shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2003.

6 Effective Date. This act shall take effect upon its passage.

2003-1225s

## AMENDED ANALYSIS

This bill establishes a commission to study certain recommendations of the New Hampshire estuaries project management plan and other issues related to the Great Bay estuary.

SENATOR GREEN: Thank you Mr. President. I rise to offer a floor amendment. This amendment makes three changes to the committee amendment that we just defeated. First it removes the appropriation from the bill as I said earlier, I will bring that to the Capital Budget Committee. Second, it adds the director of the Office of State Planning to the commission established in the bill. I ask for your support so that we can move this important project along. Thank you.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

## MOTION TO REMOVE FROM THE TABLE

Senator Boyce moved to have **HB 361-L** taken of the table.

**Adopted.**

**HB 361-L**, permitting municipalities to form regional water districts.

SENATOR BOYCE: I have the amendment in front of me and while it is being distributed...this is the bill on HB 361 which we passed earlier. It had the striking of the two-thirds vote required under municipality bonding. This simply restores the two-thirds to that text. There is some question whether or not that is needed in this text and the drafter may have taken it out to make it consistent with other parts of the RSA. My concern, anyway, was that by taking it out we might be giving legislative intent and do we want to reduce it to a majority vote? I don't believe that was our intent and so by putting it back in, we leave it at the current situation which does have a minor technicality which we can fix at some other time when they want to fix this technicality, but at that point, it will be very clear what we are doing, and in this case, it is simply restoring language of the RSA and two-thirds number.

**Question is on the adoption of the committee amendment (1096).**

**Amendment adopted.**

Senator Boyce offered a floor amendment.

Sen. Clegg, Dist. 14

**April 10, 2003**

**2003-1262s**

**10/04**

## Floor Amendment to HB 361-LOCAL

Amend RSA 33-B:2 as inserted by section 6 of the bill by replacing it with the following:

33-B:2 Issuance of Revenue Bonds. A municipality *or regional water district* may issue bonds or notes under this chapter for construction of revenue-producing facilities. Bonds issued by a municipality *or*

**regional water district** under this chapter shall not be deemed to be a pledge of the faith and credit of the state or of the municipality **or municipalities that are members of a regional water district**. Except as otherwise provided in this chapter, the principal of, premium, if any, and interest on all bonds shall be payable solely from the particular funds provided therefor under this chapter. ~~[The bonds]~~ **Bonds issued by a municipality** shall be issued in such amounts as the legislative body may authorize by a 2/3 vote as required under RSA 33:8 or 9, as applicable. **Bonds issued by regional water districts shall be issued in such amounts as the governing body may authorize pursuant to the regional water districts charter.** Bonds of each issue shall be dated, shall bear interest at such rate or rates, including rates variable from time to time as determined by such index, banker's loan rate or other method as may be determined by the authorized officers, and shall mature at such time or times as may be determined by the authorized officers, except that no bond shall mature more than 40 years from the date of its issue or beyond the expiration of the expected useful life of the facilities being financed by the bonds as determined by the authorized officers. Bonds may be made redeemable before maturity at the option of the municipality **or regional water district** at such price or prices and under such terms and conditions as may be fixed by the authorized officers prior to the issue of bonds. The authorized officers shall determine the form and details and the manner of execution of bonds. The municipality **or regional water district** may sell its bonds in such manner, either at public or private sale, for such price, at such rate or rates of interest, or at such discount in lieu of interest, as the authorized officers may determine. The provisions of RSA 33:11-a, 14 and 15 shall apply to bonds issued under this chapter.

SENATOR BOYCE: Now that we have the amendment in our hands, if you look on line ten of the amendment, it simply restores the two-thirds number. It makes no other changes. Thank you.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

### **MOTION TO REMOVE FROM THE TABLE**

Senator Martel moved to have **HB 151** taken off the table.

**Adopted.**

**HB 151**, authorizing the county convention to contract and fund performance audits of county departments.

SENATOR MARTEL: I have a floor amendment to offer Mr. President. This is the infamous HB 151 that we dealt with last week. We withdrew the amendment because we redrafted it through Legislative Services. The body of the bill and the amendment remain the same, but the title has changed. It is HB 151 and not SB 151 that we are speaking about. I gave it to the Clerk this morning. Thanks.

Senator Martel offered a floor amendment.

Sen. Martel, Dist. 18

**April 10, 2003**

**2003-1261s**

**10/04**

### **Floor Amendment to HB 151**

Amend the title of the bill by replacing it with the following:

AN ACT authorizing the county convention to contract and fund performance audits of county departments, authorizing employees of the Hillsborough and Rockingham county delegations, and relative to adoption of revisions and the budget process in city charters.

Amend the bill by replacing all after section 3 with the following:

4 Adoption of Charter Revisions. Amend RSA 49-B:4, VI to read as follows:

VI. Upon the filing of the final report, the municipal officers shall order, **as determined by the charter commission**, the proposed new charter or charter revision to be submitted to the voters at the next [regular] **primary or general** municipal election or, in the case of municipalities with biennial elections, at the next regular state biennial election held at least 45 days after the filing of the final report.

5 Budget Process. Amend RSA 49-C:23, I to read as follows:

I. A budget submission date and a date by which an annual budget shall be finally adopted by the elected body. Failing final adoption by the established date, the budget **shall be determined as provided in the city charter**, or as originally submitted by the chief administrative officer [shall become the budget] **if no such provision is made in the city charter**.

6 Effective Date. This act shall take effect upon its passage.

**2003-1261s**

### **AMENDED ANALYSIS**

This bill allows the county convention of any county to contract for a performance audit of a county department, institution, or office. The cost of an audit is to be paid from a contingency fund expended by the county convention.

This bill allows the Hillsborough and Rockingham county delegations to hire employees.

This bill also clarifies the process for voting on city charter revisions and permits a city charter to provide for a default city budget.

SENATOR MARTEL: I just want to say, Mr. President that there was only one change...there were two changes in last weeks amendment, which struck the word "special" for "special election" out of the text. It also goes into effect upon passage instead of, I think it was a year after passage. It strikes out the word "special" in "special election" and also it takes effect upon passage. **TAPE INAUDIBLE** I urge an ought to pass motion on this amendment, Mr. President, and urge HB 151 pass as amended.

SENATOR D'ALLESANDRO: Thank you Mr. President. The city of Manchester has had some concern with regard to the charter commission determining the date of an election because the perception of the election in Manchester has been that at the next general election, which is the November election, the charter revisions would come before the

people of the city of Manchester. We listened to some testimony over in the House with regard to an amendment to a Senate Bill regarding this situation. What this does is take the "special" out and says that the election could be held at the primary or the general election. I believe that the intent is to have the charter revisions brought forth at the general election in November. The rationale being the greatest number of people vote at a general election and at that time, you have the greatest participation in the process. So I guess that I am concerned about the fact that we have the primary...we are striking out the intent, which was the general election and we are inserting another option, the primary, and we are giving that option to the commission rather than to the Board of Mayor and Aldermen, which is the governing body of the city of Manchester. I have a concern. Thank you Mr. President.

SENATOR GATSAS: Senator D'Allesandro, would you believe that the Senate passed the same amendment without...with the word "special" in it, and really what this amendment does is remove the word "special" and we passed it unanimously two weeks ago?

SENATOR D'ALLESANDRO: I would believe that Senator Gatsas. I guess my reaction is that was problematic as it went out.

SENATOR ROBERGE: Thank you Mr. President. Senator Gatsas, does this amendment have to do only with Manchester?

SENATOR GATSAS: Thank you. Senator Roberge, this is the same amendment that was on SB 77. The only difference is that it removes the word "special" from line 13. Other than that, it is the same amendment that we passed two weeks ago.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

#### **MOTION TO REMOVE FROM THE TABLE**

Senator Clegg moved to have **SB 23-FN** taken off the table.

**Adopted.**

**SB 23-FN**, allowing veterans the right to purchase credit in the retirement system for certain service in the armed forces.

SENATOR CLEGG: Thank you Mr. President. I believe the pending motion on the floor is an amendment. I would urge my colleagues to vote against the floor amendment so that we could pass the underlying bill.

**Question is on the adoption of the floor amendment (1097).**

**Floor amendment failed.**

**Question is on the motion of ought to pass.**

**Adopted.**

**Ordered to third reading.**

**SB 42**, relative to charitable contributions by insurance agents. Insurance Committee. Ought to pass with amendment, Vote 3-0. Senator Flanders for the committee.



**Insurance**  
**April 1, 2003**  
**2003-1075s**

**01/05**

**Amendment to SB 42**

Amend the bill by replacing all after the enacting clause with the following:

1 Insurance; Rebating; Exceptions. RSA 402:41 is repealed and reenacted to read as follows:

402:41 Exceptions. RSA 402:39, RSA 402:40, and RSA 417:4, IX shall not prohibit:

I. An insurance company from paying to another insurance company or to any person who is a duly authorized producer, or an insurance company or such a person from receiving a commission in respect to any policy under which the entity or he or she is insured.

II. An insurance company issuing non-participating life insurance from paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from non-participating insurance.

III. An insurance company transacting industrial insurance on the weekly payment plan from returning to policyholders, who have made premium payments for a period of at least one year directly to the company of its home or district offices, a percentage of the premium which the company would have paid for weekly collection of such premiums.

IV. A producer, who is serving as a governing board member of a nonprofit organization, from donating all of the commission to which the producer is entitled for the procurement of insurance by the nonprofit organization. For the purposes of this paragraph, a nonprofit organization is listed as an exempt organization under Section 501(c)(3), (4), (6) or (7) and exempt from the federal income tax under Section 501(a) of the Internal Revenue Code of 2002 and its subsequent amendments. Any producer who elects to make a distribution of commission under this section shall:

(a) File a written description of its distribution program with the insurance commissioner for approval before the first distribution is made. If the commissioner does not act on the applicant's distribution program within 5 days of its receipt, the distribution plan or program is considered approved; and notify the insurance commissioner, in writing, of each distribution made under the program within 14 days of when the distribution is made; and

(b) Notify the director of charitable trusts pursuant to RSA 7:28 and in compliance with RSA 7:19-a, II.

V. An insurance company or producer from providing a service, activity or product without a fee, or with a reduced fee; provided, that the provision of such service, activity or product is not unfairly discriminatory under RSA 417:4, VIII or any other applicable statute or rule and such service, activity or product is:

(a) Clearly identified and included within the insurance policy, annuity contract, or brokerage agreement; or

(b) A service, activity or product related to the firm's marketing, distributing or servicing of such insurance contract or a risk control activity offered to or undertaken for the benefit of the client.

2 Effective Date. This act shall take effect 60 days after its passage.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. This started out to be a simple bill where a constituent contacted me to see if we could change the regulations of the state so that they could give their fee to the board that they sit on. Basically we have a situation with a gentleman from the Insurance Broker who sits on the board of a nursing home and the question of a \$15,000 commission that he was receiving and because of our law he could not sell the insurance, therefore he could not return the commission. We went to the Insurance Department and they came up, and they found a problem which has been going on for years where the changes in this bill are that without actual state approval or disapproval, where insurance agents are often served services free of charge in return for the customers keeping their business with them. Often these services are relatively small in nature and do not require a lot of attention by the provider. The Insurance Department wanted to ensure that this practice would be acceptable in ensuring service to a client. The provider must notify the Insurance Commissioner if he or she intends to offer this service. I ask you to pass this bill as ought to pass. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 119**, relative to medical and hospital liability insurance. Insurance Committee. Ought to pass with amendment, Vote 5-0. Senator Flanders for the committee.

**Insurance**  
**April 3, 2003**  
**2003-1139s**  
**01/04**

### **Amendment to SB 119**

Amend the bill by replacing all after section 1 with the following:

2 New Paragraph; Burden of Proof in Medical Injury Cases. Amend RSA 507-E:2 by inserting after paragraph II the following new paragraph:

III. The requirements of this section are not satisfied by evidence of loss of opportunity for a substantially better outcome. However, this paragraph shall not bar claims based on evidence that negligent conduct by the defendant medical provider directly caused the harm alleged, rather than merely hastening or aggravating an underlying condition, regardless of the chance of survival or recovery from the underlying condition.

3 Applicability. This act shall apply to all actions for medical injury arising on or after the effective date of this act.

4 Effective Date. This act shall take effect upon its passage.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. Our hearing on this bill lasted almost as long as our session has lasted today. I think that Senator Gatsas will be very happy with this bill because it helps the paper mill in Berlin. I move that SB 119 ought to pass with amendment as recommended by our committee, I am very proud to say, by a 5-0 vote. Senate Bill 119 as amended is the product of a lot of work between the coalition of healthcare providers and insurers, and the New Hampshire Trial Lawyers. I am pleased to report that the amended bill is endorsed by all interested parties. This bill is a legis-

lative response to a decision of the New Hampshire Supreme Court, which allowed a new form of damage recovery in medical liability lawsuits, known as "loss of opportunity." But the committee also heard testimony from opponents of the bill, who said it went too far. They argued that in its original form, the bill would prevent claims in cases like the very recent, very unfortunate Duke Hospital transplant case. The intent of the amended bill is to overrule the *Lord v. Lovett* decision and bar medical malpractice claims where loss of opportunity for a better recovery cannot be quantified. The amended version also protects patients by making clear that health care providers may still be held accountable for their negligence if it causes quantifiable harm, regardless of the patient's chance of survival and recovery. I would like to thank all of the people involved in this that sat down. I appreciate your ability to compromise and your ability to come up with an agreement. It is a lot easier to stand here and present a case if everybody agrees. The committee unanimously supports this bill with amendment, and we urge the full support of the recommendation of the committee. Thank you very much.

SENATOR BELOW: Thank you. I stand as one of the two Democratic sponsors of the original bill and I am pleased to see that you have gotten an agreement of all of the different parties. I think that it is important that this move forward this year. I appreciate the fact that everyone worked to make that happen. I think that it is going to do a lot to help contain the rising costs of malpractice insurance and still give people the right for legitimate compensation when they are harmed by negligence. Thank you.

SENATOR PRESCOTT: Thank you Mr. President. This SB 119, I do want to thank everybody involved because many, many doctors that you may know, in your home town, are relying upon this bill being passed. I hope that this signal from the Senate to the House is clear that we want to protect our doctors to be able to stay in the state rather than be forced out of state because of the high cost of insurance. Thank you Mr. President.

SENATOR CLEGG: I was going to move to table the bill, but I am not sure now.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 14**, relative to vacancies in county offices.

### **SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 14**, relative to vacancies in county offices.

Senator Boyce moved to concur.

SENATOR BARNES: I would like to know what they have done?

SENATOR BOYCE: This bill was dealing with the replacement of county officers. If the county commissioner died, in office, how would they be

replaced; we changed it from being a judicial operation to being the county delegation. That was no problem. They passed that. They also amended onto it, a small change that changes the Gunstock Ski Area Charter, which being a county owned ski area, their charter did not allow them to accept and expend cash gifts. Well somebody wants to give a county owned ski area some money so they said, "please, let us take this money. So this bill simply amends that charter to allow them to take cash. Thank you.

SENATOR D'ALLESANDRO: Senator Boyce, maybe the chair can answer this question. What is the effective date of this piece of legislation?

SENATOR BOYCE: I believe that the effective date on the Gunstock part of it is immediate and the other was what the original bill was.

SENATOR D'ALLESANDRO: We have a vacancy. There is a vacancy in Rockingham County at the present time. How will that vacancy be filled, by the old methodology or the new methodology?

SENATOR CLEGG: It is my understanding that that vacancy would be...if this passes and the Governor signs it right away, that that vacancy would be passing under the new system.

SENATOR EATON (In the Chair): The Clerk says 60 days after passage, unless it is amended. It is upon passage. It would be effective immediately.

### **Adopted.**

**SB 184**, relative to reinsurance. Insurance Committee. Ought to pass with amendment, Vote 3-0. Senator Martel for the committee.

**Insurance**  
**April 1, 2003**  
**2003-1076s**  
**01/05**

### **Amendment to SB 184**

Amend the bill by replacing all after the enacting clause with the following:

1 Counterclaims Deleted. Amend the section heading of RSA 402-C:34 to read as follows:

402-C:34 Setoffs [~~and Counterclaims~~].

2 Counterclaims Deleted. Amend the introductory paragraph of RSA 402-C:34, II to read as follows:

II. EXCEPTIONS. No setoff [~~or counterclaim~~] shall be allowed in favor of any person where:

3 Liability of Insurer. RSA 402-C:36 is repealed and reenacted to read as follows:

402-C:36 Liability of Insurer. The amount recoverable by the liquidator from a reinsurer shall not be reduced as a result of delinquency proceedings unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance shall be payable by the assuming insurer on the basis of the claims allowed against the ceding insurer in the insolvency proceedings, under contract or contracts reinsured without diminution because of the insolvency of the ceding insurer directly to the ceding insurer or to its domiciliary liquidator or receiver except:

I. Where the contract specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or

II. Where the assuming insurer with the consent of the direct insured or insured has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.

4 Repeal. RSA 402-C:34, II(d), relative to disallowing certain setoffs and claims, is repealed.

5 Effective Date. This act shall take effect 60 days after its passage.

**2003-1076s**

### AMENDED ANALYSIS

This bill deletes the provision in current law which disallows setoffs of premiums payable to an insolvent insurer. This bill also clarifies the liability of the insurer.

SENATOR MARTEL: Thank you very much, Mr. President. I move that SB 184 ought to pass with amendment as recommended by the Senate Insurance Committee. This bill will allow an insurer who both owes money to another company, and is also owed money by that same company, to offset the two obligations and pay the net amount owed to that company. Under existing law, the insurer would have to pay the premium owed to the insolvent company without taking any deduction if he was owed a premium from that company at the same time. The committee supports this bill with amendment, and I ask the full Senate to do the same. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 189**, relative to certain automobile accidents. Insurance Committee. Rerefer to committee, Vote 3-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you Mr. President. I move that SB 189 be rereferred to committee as recommended by the Insurance Committee. This bill was intended to address an issue that has been raised by a number of my constituents in recent months. It involved people who have suffered damage to their vehicles from animals or rocks hitting the vehicle while it is moving down the road. Some of my constituents have seen their premiums rise as a result of these types of accidents, or have actually been denied renewal. This bill would redefine these types of accidents, so they could no longer be used as grounds for raising premiums or denying coverage. However, there is a House Bill that is broadly reviewing many insurance practices, including something very similar to this bill. Therefore, the committee feels it would be best to rerefer this bill and wait for the more comprehensive House Bill to reach the committee. Thank you Mr. President.

### MOTION TO TABLE

Senator Flanders moved to have **SB 189** laid on the table.

**Adopted.**

### LAIID ON THE TABLE

**SB 189**, relative to certain automobile accidents.

**HB 126**, relative to posting statutes at polling places. Internal Affairs Committee. Ought to pass, Vote 3-0. Senator Boyce for the committee.

**SENATOR BOYCE:** Thank you Mr. President. I move that HB 126 ought to pass. House Bill 126 modifies and corrects references to statutes that must be posted outside of polling places. The Secretary of State views HB 126 as a "housekeeping". It enables the state to begin implementation of the Help America Vote Act (HAVA), which was a comprehensive federal statute that changes a lot of aspects of how voting is done. I believe that this is the first bill that we have had that deals with that. There is one more today and we will have more in the future, as it will require some more changes. I ask you to agree with the committee and vote ought to pass on this.

**Adopted.**

**Ordered to third reading.**

**HB 275**, establishing a committee to study ballot reform. Internal Affairs Committee. Inexpedient to legislate, Vote 3-0. Senator Boyce for the committee.

**SENATOR BOYCE:** Thank you Mr. President. I move that HB 275 be inexpedient to legislate. House Bill 275 establishes a committee to study ballot reform measures. The committee felt that in light of the issues and the work that will be undertaken with the federal Help America Vote Act, this bill would not be needed. There will be considerable review of all of these things under that. Therefore, the Internal Affairs Committee recommends HB 275 be inexpedient to legislate. Thank you.

**SENATOR BELOW:** Thank you Mr. President. I note that one of the duties of the committee that would have been created was to look at, to consider the feasibility **TAPE INAUDIBLE** in none of the above option. Personally, I would like to have an amendment in the above option at times. I think that maybe we ought to pass this so that we could look at one of the above. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**HB 305**, relative to time allowed for voting. Internal Affairs Committee. Ought to pass, Vote 5-0. Senator Flanders for the committee.

**SENATOR FLANDERS:** Thank you Mr. President and members of the Senate. This is not the most important bill that you have heard today or this year. Basically there is a time limit that the moderator can allow a person to stay in a booth and vote. I have been a moderator for 39 years and I did not know that. This bill takes that time away and says that the moderator can use common sense on the amount of time that a person stays in a booth. This was brought about because of SB 2, it takes a lot longer to vote when you have SB 2 towns. I ask for your support. Thank you very much.

**Adopted.**

**Ordered to third reading.**

**SB 168**, allowing school boards to adjourn to nonpublic session to consider pupil disciplinary matters. Judiciary Committee. Ought to pass with amendment, Vote 3-0. Senator Clegg for the committee.

**Senate Judiciary****April 1, 2003****2003-1078s****04/01****Amendment to SB 168**

Amend the bill by replacing all after the enacting clause with the following:

1 New Subparagraph; Access to Public Records and Meetings; Nonpublic Sessions. Amend RSA 91-A:3, II by inserting after subparagraph (i) the following new subparagraph:

(j) Consideration by a school board of any matters that would reveal the content of education records maintained by the school district or disclose personally identifiable information about a student, contrary to 20 United States Code section 1232g.

2 Access to Public Records and Meetings; Nonpublic Sessions. Amend RSA 91-A:3, III to read as follows:

III. Minutes of proceedings in nonpublic session shall be kept and the record of all actions shall be promptly made available for public inspection, except as provided in this section. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting, unless, by recorded vote of 2/3 of the members present, it is determined that divulgence of the information likely would affect adversely the reputation of any person other than a member of the body or agency itself, or render the proposed action ineffective, or pertain to terrorism, more specifically, to matters relating to the preparation for and the carrying out of all emergency functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life. This shall include training to carry out such functions. In the event of such circumstances, information may be withheld until, in the opinion of a majority of members, the aforesaid circumstances no longer apply. ***Minutes of proceedings that would reveal the content of education records maintained by the school district or disclose personally identifiable information about a student shall not be publicly disclosed at any time, except as permitted by 20 United States Code section 1232g.***

3 Effective Date. This act shall take effect January 1, 2004.

SENATOR CLEGG: Thank you Mr. President. I move that SB 168 ought to pass with amendment. This bill allows school boards to adjourn to a nonpublic session to consider pupil disciplinary matters. The current rights in those statutes conflicted with federal law when dealing with private information about the students as outlined in the Privacy Act. Currently...this is a really good bill and I hope that you will support it.

SENATOR BARNES: Senator Clegg, does this mean that we have not got this in place and we have been breaking the law in Raymond for the last year? We have been doing this right along. I thought that it was already a law.

SENATOR CLEGG: I think whenever you use common sense, Senator, you are not breaking the law. I would say that this will cover private hearings before the School Board and the students would, who may want to merely challenge their class ranking may not want to do so in public. Currently, the law doesn't allow you to go into a private session.

SENATOR BARNES: By God, we have been breaking the law, would you believe?

SENATOR CLEGG: By God, I think that you used common sense.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 211**, relative to the expungement of DNA records and multiple qualifying convictions. Judiciary Committee. Inexpedient to legislate, Vote 4-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you Mr. President. I move SB 211 inexpedient to legislate. Senate Bill 211 was relative to the expungement of DNA records and multiple qualifying convictions and was duplicative of HB 215. As these bills both deal with the same matter and HB 215 has already passed the House and is on its way to the Senate, there is no need to pass this legislation. Therefore, the Judiciary Committee recommends that SB 211 be inexpedient to legislate. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**SB 218**, establishing a study committee to examine child custody and support laws and practices in New Hampshire. Judiciary Committee. Inexpedient to legislate, Vote 3-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you Mr. President. I move SB 218 inexpedient to legislate. Senate Bill 218 sought to establish a committee to examine child custody and support laws and practices in New Hampshire. This legislation dealt with the same topic as HB 310 that also appears on today's calendar. Testimony received at the public hearing indicated that establishing a commission was preferable to a legislative study because it affords the opportunity for more parties to be directly involved. Therefore, the Judiciary Committee recommends that SB 218 be inexpedient to legislate. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**HB 277-FN**, relative to an extended term of imprisonment for manslaughter and relative to jury findings which warrant an extended term of imprisonment. Judiciary Committee. Ought to pass, Vote 3-0. Senator Peterson for the committee.

SENATOR PETERSON: Thank you Mr. President. I move HB 277 ought to pass. House Bill 277 allows for an extended term of imprisonment for the crime of manslaughter and requires that the circumstances which warrant an extended term of imprisonment shall be based on jury findings beyond a reasonable doubt. When the statutes were amended to include extended terms of imprisonment, manslaughter was missed. In order to correct this and to concur with a recent Supreme Court ruling, the Attorney General's office requested the provisions contained in HB 277 be adopted. The Judiciary Committee recommends this action. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 310**, establishing a commission to study child support issues. Judiciary Committee. Ought to pass with amendment, Vote 3-0. Senator Roberge for the committee.



**Senate Judiciary**  
**April 1, 2003**  
**2003-1080s**  
**05/10**

**Amendment to HB 310**

Amend the bill by replacing all after section 5 with the following:

6 Reports. The commission shall submit a preliminary report of its findings and recommendations on or before November 1, 2003, and a final report of its findings and recommendations on or before December 1, 2004, to the speaker of the house of representatives, the senate president, the governor, the house clerk, the senate clerk, and the state library.

7 Effective Date. This act shall take effect upon its passage.

SENATOR ROBERGE: Thank you Mr. President. I move HB 310 ought to pass. House Bill 310 establishes a commission to study child support issues. Thank you.

**Amendment adopted.**

Senator Below offered a floor amendment.

Sen. Below, Dist. 5

**April 9, 2003**  
**2003-1239s**  
**04/10**

**Floor Amendment to HB 310**

Amend the title of the bill by replacing it with the following:

AN ACT establishing a commission to study child support and related child custody issues.

Amend section 1 of the bill by replacing the introductory paragraph with the following:

There is established a commission to study child support and related child custody issues. The commission shall consist of the following members:

Amend section 1 of the bill by replacing paragraph II with the following:

II. Two members of the senate, appointed by the president of the senate.

Amend the bill by replacing section 2 with the following:

2 Duties of the Commission. The commission shall:

I. Review RSA 458:17 and RSA 458-C, including RSA 458-C:5, addressing special circumstances warranting adjustments to the application of the child support guidelines, to determine their effectiveness and fairness and to minimize incentives for unnecessary adversarial proceedings between parents, and to promote better outcomes for children and families.

II. Review RSA 639:3, I and RSA 639:4, regarding criminal sanctions for non-support, to determine their effectiveness and fairness.

III. Study the impact of the costs of providing medical insurance and dental care for the non-custodial parent and as part of a child support order.

IV. Study federal and other states' child support guidelines, statutes, and legislation with a view toward improving New Hampshire's child support formula. Specifically, the commission shall determine the amount of financial support necessary to adequately support a child in New Hampshire.

V. Study joint and shared custody arrangements with a view toward making recommendations for changes to the child support guidelines formula.

VI. Consider the establishment of minimum standards of behavior and responsibility which, if met by a parent, would entitle the parent or parents to legal custody or joint legal custody, barring extraordinary findings by a judge that such custody would be harmful to a child.

VII. Hold 4 public hearings at separate geographic locations around the state for the purpose of obtaining testimony from the public on child support issues.

VIII. Study the relationships between visitation, custody, and child support and consider improved and more specific standards for the sharing of child support costs such as a pro ration of costs based on the number of days in each month when a parent has physical custody rights, whether during visitation or otherwise.

IX. Review the self-support level necessary and determine appropriate minimum and maximum levels for both self-support and support.

X. Make recommendations for any proposed legislation that the commission deems necessary.

**2003-1239s**

#### AMENDED ANALYSIS

This bill establishes a commission to study child support and related child custody issues.

SENATOR BELOW: Thank you Mr. President. I rise to offer a floor amendment and I would like to speak to my motion briefly. This amendment incorporates SB 218 that we just voted inexpedient to legislate because it is a duplicative of this commission, but in discussing it with the prime sponsor of this bill, Representative Bickford, he indicated to me earlier today that he felt that this proposed floor amendment would be an improvement to the bill simply because it adds...it fleshes out some of the duties of the commission. I won't go into detail, **TAPE INAUDIBLE**. It just makes sure that the commission kind of covers all the issues that maybe should be covered. It does offer to increase the number of members in the Senate from one to two and I wrote that up because I am willing to serve on the commission and I understand that Senator Sapareto was told that Representative Bickford would be willing to serve as well. So there is at least two of us who would be willing to serve. Thank you Mr. President.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise in support of Senator Below's amendment. There is one issue that has been brought to my attention over this session. It is the custody situation and the treatment of both parties in terms of this process. I have had numerous people calling about this situation. It really should be looked at quite carefully. We are in a society that has seen a lot of changes in society and I believe that we should look at this quite carefully as we move forward. I support the amendment and I think that its time has come. Thank you Mr. President.

SENATOR PETERSON: Thank you Mr. President. Although I hadn't focused on the two members of the Senate being included here, and am happy to hear that there are two who are willing, I do want to compliment Senator Below on all of his efforts in this subject area, and support the floor amendment before us. In testimony before our committee, there was some rather shocking facts revealed. Just for a moment, to

give the Senate the flavor of it. There are 29,000 to 30,000 individuals at this time, in our state, who are more than \$50 in arrears on their child support payments. Of these, a very interesting fact was revealed about a serious Catch-22 in the law where as many as 3,000 of these in our state who are paying up to 25 or even 40 percent of their income in child support, which the custodial parent can never receive because they are receiving TANF. The result of this is that the monies go as a rather exorbitant tax to the coffers of the state, and 50/50 between the federal government, they are split. This is a situation which is obviously, in my view, a great concern. We had a little research done on it, and it turns out that there is no federal requirement that would preclude us from returning those funds at least the 50 percent that the state keeps, to the families, so that they might be able to be used in some of the impoverished people situation, who are trying to support two households. There is a lot here to look at, and I appreciate the fact that we will have a commission and it will get into it. Thank you Mr. President.

SENATOR BARNES: Thank you Mr. President. Senator Peterson, are you telling us that if I am paying child support to my wife and that money might not be going to my wife?

SENATOR PETERSON: **TAPE INAUDIBLE** from testimony that we received from an attorney from the Department of Health and Human Services...

SENATOR BARNES: How does that happen?

SENATOR PETERSON: Well, it happens because under the federal rules, if the monies are not enough to take the custodial parent out of qualifying for the TANF fund, they are disallowed to receive child support, yet the child support still must be paid, so it ends up in government hands. This is a fact that we probably could do an evening news piece on and discuss it throughout the afternoon, but I must say that Senator Clegg and myself and others on the committee, are very interested in possibly pursuing legislation to rectify this situation in the coming year.

SENATOR BARNES: I have a follow up question for you Senator. I think that is gross and I don't...I think that situation is gross, but I would like to ask you a stupid question. You said up to 3,000 folks might be under this. Just for the record, how much money would then come out of the state coffers if that happens?

SENATOR PETERSON: I have that as a committee record, but don't have it right in front of me to give you.

SENATOR BARNES: When could you give it to us? I'll bet Senator Green would like to know that.

SENATOR PETERSON: I have the testimony here before me, and I can get back to you and give you that answer.

SENATOR BARNES: Would you give that to Senator Green, not to myself?

SENATOR PETERSON: I would be glad to give it to Senator Green. There is a \$50 minimum, which is required in order for a person to participate in the child support, which we have not yet gotten around to. But when you have 25 to 40 percent of the low income persons salary going out and not actually being received by the family, it had a budgetary impact, I have got to say that it is a very cruel and unusual form of taxation. Thank you Senator.

SENATOR BARNES: Thank you very much.

SENATOR ROBERGE: Originally, I was on one of the original child support enforcement groups, and when the custodial parent gets that money from the state, the taxpayers are paying for it. The original intention was that the taxpayer was really not responsible for the support of these children and the natural parent should be. So when the mother or whoever is taking care of the children, gets this TANF or whatever it is, that is money that is coming from the taxpayer, and the feeling was that the taxpayers probably should be getting reimbursed from the money that is being given. This was a fairness issue and possibly it has gone too far the other way. But you must consider that the taxpayers are paying for this child support.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 187**, relative to designating local emergency management directors. Public Affairs Committee. Inexpedient to legislate, Vote 4-0. Senator Morse for the committee.

SENATOR MORSE: Thank you Mr. President. I move that SB 187 be inexpedient to legislate. The bill directs local government to designate a local emergency management director and provides for the police chief of each municipality to serve as the default director in the absence of such formal designation. While SB 187 has good intentions, the Public Affairs Committee feels that the bill is redundant. Current law states that a local emergency management director shall be appointed and removed by the county commissioner of the county, the city councilor of the city, or the board of selectmen of the town. In the event that a local director has not been appointed at the time of an emergency, the chief elected official shall be directly responsible for the organization, administration and operation of such local organization for emergency management. The Public Affairs Committee recommends a motion of inexpedient to legislate. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**HB 86**, relative to the membership of the permissible fireworks review committee. Public Affairs Committee. Ought to pass, Vote 4-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you Mr. President. I move HB 86 ought to pass. This bill simply adds one Senator to the Permissible Fireworks Committee. Currently there are eight voting members. With the addition of one Senator, we will be evening the representation of the House and Senate to two members each and preventing tie votes within the committee. The Permissible Fireworks Committee has worked to ensure that fireworks are safe. Since the establishment of the committee, there have been no serious injuries related to the use of fireworks here in New Hampshire. The Public Affairs Committee recommends ought to pass for HB 86.

**Adopted.**

SENATOR BOYCE: Senator Below just asked me a question. Do the members of this commission get to try the fireworks out and if so, we want to volunteer?

**Ordered to third reading.**

**HB 127**, establishing a committee to study the effectiveness and fairness of county government. Public Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Barnes for the committee.

**Public Affairs**

**April 2, 2003**

**2003-1090s**

**10/09**

**Amendment to HB 127**

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study the effectiveness, fairness, and feasibility of continuing county government.

Amend the bill by replacing section 1 with the following:

1 Committee Established. There is established a committee to study the effectiveness, fairness, and feasibility of continuing county government.

Amend section 3 of the bill by inserting after paragraph III the following new paragraph:

IV. Determine the feasibility of continuing county government.

**2003-1090s**

**AMENDED ANALYSIS**

This bill establishes a committee to study the effectiveness, fairness, and feasibility of continuing county government.

SENATOR BARNES: Thank you Mr. President. I move that HB 127 ought to pass with amendment. All that we did with the amendment in the committee, was add feasibility of continuing county government. We would like to study that. It was unanimous in the committee and we would appreciate your support on it.

**Amendment adopted.**

Senator Flanders offered a floor amendment.

Sen. Flanders, Dist. 7

**April 8, 2003**

**2003-1199s**

**10/04**

**Floor Amendment to HB 127**

Amend the bill by replacing section 2 with the following:

2 Membership and Compensation.

I. The members of the committee shall be five members of the house of representatives, appointed by the speaker of the house.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

SENATOR FLANDERS: Thank you Mr. President. I rise to offer a friendly floor amendment. The original bill calls for three members of the House and three members of the Senate. Since this is my second term in the Senate, I am a fast learner. This amendment does away with the present three House members and the three Senate members. And the new one

will say that the members of the committee shall be five members of the House of Representatives. Now the reason that I did this was because the House members are delegations and they are involved in county government and the Senate is not, and we thought that it was better that there be more Representatives. Thank you.

SENATOR BARNES: Thank you Mr. President. Would you believe that I didn't pick that up in the committee. You are absolutely right. This is a very friendly amendment? And would you also believe that when you say friendly, I think of ice cream and I wish that the Senator President might bring some in about this time, it is getting that time of day? Hot fudge with nuts would be fine, Mr. President.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in its amendments to the following entitled Bills sent down from the Senate:

**HB 101**, relative to qualifications for state offices and relative to vacancies in public offices.

**SB 131**, establishing a committee to study promoting the establishment of free clinics for uninsured and underinsured persons. Public Institutions, Health and Human Services Committee. Ought to pass with amendment, Vote 3-1. Senator Estabrook for the committee.

**Public Institutions, Health and Human Services**

**April 3, 2003**

**2003-1135s**

**01/04**

### **Amendment to SB 131**

Amend the title of the bill by replacing it with the following:

**AN ACT** establishing a committee to study the system of health care safety net providers in New Hampshire, and options for improving access to primary and preventive care for the uninsured and underinsured.

Amend the bill by replacing section 1 with the following:

1 Committee Established. There is established a committee to study the system of health care safety net providers in New Hampshire, and options for improving access to primary and preventive care for the uninsured and underinsured. Currently, there are a number of health centers, clinics, and community services that address the health care needs of underserved populations a variety of ways. The committee shall study the current system and make recommendations for improving access to primary and preventive care for uninsured and underinsured residents of this state.

Amend the bill by replacing section 3 with the following:

3 Duties. The committee shall study promoting providers of affordable primary and preventive health care services to the uninsured and underinsured. Issues the committee shall study shall include but not be limited to:

I. Identifying current primary and preventive health care safety net providers and where such providers are located.

II. The affordability, cost effectiveness, and quality of services provided by such health care safety net providers.

III. Ways to increase federal sources or grant sources that could create new or expanded access points for primary and preventive health care services to the uninsured and underinsured.

IV. Improvement of linkages between and among community health care providers to increase primary care access for the uninsured and underinsured.

V. Liability insurance for health care providers who volunteer their time in clinics.

**2003-1135s**

#### AMENDED ANALYSIS

This bill establishes a committee to study the system of health care safety net providers in New Hampshire and options for improving access to primary and preventive care for the uninsured and underinsured.

SENATOR ESTABROOK: Thank you Mr. President. I move ought to pass with amendment on SB 131. **TAPE INAUDIBLE** across the state to provide healthcare to the under and uninsured residents of New Hampshire; however, some areas of the state do not have a community health center in place and those that do are challenged to address accessibility issues to their clients. The disabled single adult without children and others outside the traditional healthcare service boundaries, too often fall through the cracks and receive the more costly and irregular care as the last resort in hospital emergency rooms. Senate Bill 131 will look at how healthcare is provided to the under and uninsured, study how existing efforts could be enhanced, linkages improved, federal resources increased, and take some of the pressure off of some of our local hospitals in the process. The committee amended the bill to provide and recognize the activities that the community health centers are performing in our communities today and recommends ought to pass with amendment on SB 131. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**SB 190**, relative to community living facilities. Public Institutions, Health and Human Services Committee. Ought to pass with amendment, Vote 4-0. Senator O'Hearn for the committee.

**Public Institutions, Health and Human Services**

**April 3, 2003**

**2003-1130s**

**05/10**

#### **Amendment to SB 190**

Amend the bill by replacing section 1 with the following:

1 Standards and Certification for Community Living Facilities; Imposition of Administrative Fines. Amend RSA 126-A:20 to read as follows:

126-A:20 Standards and Certification for Community Living Facilities.

**I.** The commissioner shall adopt rules pursuant to RSA 541-A to govern the establishment and operation of community living facilities. The certification of community living facilities shall be based on these rules. *Certification of such community living facilities shall be on a per-*

*manent, temporary, or emergency basis in accordance with these rules.* No placements shall occur in the absence of such certification. The commissioner may withdraw certification at any time the commissioner has reasonable cause to believe that there exist violations of federal, state, or local law or of department rules adopted pursuant to RSA 541-A pertaining to community living facilities.

**II.** Certifications shall be subject to periodic review and renewal by the commissioner.

**III.** *The commissioner of the department of health and human services, after notice and hearing, pursuant to rules adopted under RSA 541-A, may impose an administrative fine not to exceed \$2,000 for each offense upon any person who violates any provision of this subdivision or rules adopted under this subdivision. Rehearings and appeals from a decision of the commissioner shall be in accordance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties or administrative actions under this subdivision. The commissioner shall adopt rules in accordance with RSA 541-A relative to administrative fines which shall be scaled to reflect the scope and severity of the violation. The sums obtained from the levying of administrative fines under this subdivision shall be forwarded to the state treasurer to be deposited into the general fund.*

2003-1130s

#### AMENDED ANALYSIS

This bill authorizes the department of health and human services to certify community living facilities on a permanent, temporary, or emergency basis. The bill also authorizes the department to impose administrative fines for violations of the chapter or regulations implemented under this chapter.

SENATOR O'HEARN: Thank you Mr. President. I move ought to pass with amendment on SB 190. Community living facilities are either family homes or stacked individual apartments for the developmentally disabled or where people suffering from mental illness reside. Although the Department of Health and Human Services has certified these facilities on an annual basis for a number of years in order to obtain Medicaid funding, the Joint Legislative Committee on Administrative Rules expressed concerned about the department's authority to do so under current law. Senate Bill 190 would authorize that the Department issue three types of certification. Emergency, temporary and permanent. The bill also authorizes the department to issue administrative fines for critical violations of the rules governing these homes. The department currently has the authority to impose fines in all licensing areas with the exception of community living facilities. The committee amended the bill to clarify that the fines will be scaled to reflect the scope and severity of the violation and to provides rehearing and appeals. The committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**



**SB 193**, extending the report date for the commission on the education of the deaf and hard of hearing in New Hampshire. Public Institutions, Health and Human Services Committee. Ought to pass with amendment, Vote 3-0. Senator Martel for the committee.

**Public Institutions, Health and Human Services**

**April 3, 2003**

**2003-1133s**

**04/10**

**Amendment to SB 193**

Amend the title of the bill by replacing it with the following:

**AN ACT** extending the report date for the commission on the education of the deaf and hard of hearing in New Hampshire and the commission on architecturally secure facilities and community shelter care facilities for juveniles.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 Commission on Architecturally Secure Facilities and Community Shelter Care Facilities for Juveniles; Report Date Extended. Amend 2001, 97:6 as amended by 2002, 50:2 to read as follows:

97:6 Report. The commission shall report its findings, which shall include any reports from any independent consultants, and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, [2002] **2004**.

**2003-1133s**

**AMENDED ANALYSIS**

This bill extends the report date for the commission on the education of the deaf and hard of hearing in New Hampshire, established in 2000, 43, from November 1, 2002 to November 1, 2005. The bill also extends the report date for the commission on architecturally secure facilities and community shelter care facilities for juveniles to November 1, 2004.

**SENATOR MARTEL:** Thank you Mr. President. I move ought to pass with amendment on SB 193. It is a simple bill, one that means an awful lot to the deaf and hard of hearing in New Hampshire and the people who work with the deaf and hard of hearing. The Commission on Education of the Deaf and Hard of Hearing in New Hampshire expired on December of 2002; however, the commission still has work to do and in order to continue to develop and promote the programs that are needed, the commission is asking for the advantage to work for three more years. This includes two years of fact-finding and one year of oversight at the Department of Education, which is supporting the bill. The committee amended the bill to include a provision that extends the reporting date of the commission on architecturally secure facilities and community shelter care facilities for juveniles. This commission on architecturally secure facilities would like the opportunity to complete its work by November of 2004. The committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 253**, relative to the design build concept for certain projects. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Martel for the committee.

**Senate Transportation**

**March 27, 2003**

**2003-1023s**

**06/01**

**Amendment to HB 253**

Amend RSA 228:4, I(f) as inserted by section 1 of the bill by replacing it with the following:

(f) Projects may be built through lease purchase arrangements based on a request for proposal provided that selection and award is based on an objective standard and that there are measurable criteria for evaluation. ***Capital budget*** projects may be built under the design build concept based on a request for proposal provided that selection and award is based on an objective standard and that there are measurable criteria for evaluation only if such projects are expressly designated as design build and authorized as such by the capital budget while the general court is in session or by the fiscal committee when the general court is out of session. ***The commissioner shall report the results of any capital budget project using the design build concept to the capital budget overview committee within 90 days after the completion of the project.***

SENATOR MARTEL: Thank you Mr. President. I move HB 253 ought to pass as amended. This bill will allow the Department of Transportation to use the design-build concept for projects whose costs do not exceed \$1 million. This is a pilot program that came out of the recommendation of last year's HB 2000 study committee. Design-build projects differ from the traditional construction contract process because they are one bid or contract for the entire project. Traditional projects take out two contracts, the first to design or engineer the project and the second to construct it. It is hoped that by implementing the design-build method, the state will be able to save money and expedite the construction process for some of the items on the DOT's 10-year highway plan. House Bill 253's amendment requires the commissioner of the Department of Transportation to prepare a final report on any Capital Budget project using the design-build concept. The report must then be submitted to the Capital Budget Overview Committee within 90 days of the projects completion. The Transportation Committee recommends HB 253 ought to pass as amended and asks your support. Thank you.

**Amendment adopted.**

Senator Morse offered a floor amendment.

Sen. Morse, Dist. 22

**April 9, 2003**

**2003-1242s**

**06/01**

**Floor Amendment to HB 253**

Amend RSA 228:4, I(g) as inserted by section 2 of the bill by replacing it with the following:

(g) Statewide transportation improvement program projects with a cost not to exceed \$1,000,000 and which are related to transportation enhancement, congestion mitigation and air quality, or intelligent transportation systems, may be developed and constructed utilizing the de-

sign build concept based on a request for proposal, provided that selection is based on an objective standard and measurable criteria for evaluation of the proposals. The commissioner shall report the results of any statewide transportation improvement program project using the design build concept to the capital budget overview committee within 90 days after the completion of the project.

**SENATOR MORSE:** Thank you Mr. President. If I speak to this floor amendment while it is being passed out, hopefully it will be done that quick. Basically all that this does is in paragraph "g" it adds the same language that we put in paragraph "f". Now paragraph "g" is the paragraph that referred to statewide transportation projects and we wanted to make sure that they had a reporting system and that is what this amendment does.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 498**, relative to 20-day vehicle registrations. Transportation Committee. Ought to pass, Vote 4-0. Senator Johnson for the committee.

**SENATOR JOHNSON:** Thank you Mr. President. I move HB 498 ought to pass. This bill amends RSA 261:57 to eliminate the restriction that allowed only one 20-day registration to be issued during a calendar year for a vehicle. The Department of Safety requested HB 498 to clarify that it's not a problem for a car dealership to register a vehicle more than once a year for the purposes of resale. RSA 261:57 still provides that an individual is not allowed to apply for a 20-day registration on the same vehicle more than once within a 12-month period. The Transportation Committee recommends HB 498 ought to pass and asks your support. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 571-FN-L**, relative to Old Newport Road and the end of Main Street in the town of Marlow. Transportation Committee. Ought to pass, Vote 4-0. Senator Martel for the committee.

**SENATOR MARTEL:** Thank you Mr. President. I move HB 571 ought to pass. This bill reclassifies pieces of Old Newport Road and the end of Main Street in Marlow as Class V highways for the purposes of transferring ownership from the state to the town. The reclassification will delegate responsibility for maintaining the roads to the town of Marlow. Both parties support this bill and transfer of ownership. The Transportation Committee recommends the motion of ought to pass for HB 571. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 833-L**, relative to Shaker Road and Bay Hill Road in the town of Northfield. Transportation Committee. Ought to pass, Vote 4-0. Senator Flanders for the committee.

**SENATOR FLANDERS:** Thank you Mr. President and members of the Senate. The town of Northfield, New Hampshire and the state of New Hampshire have agreed to reclassify 1.61 miles of Shaker Road and

.79 miles of Bay Hill Road in the town of Northfield. All of the upgrade work has been done and paid for. There is no finance on this bill and all that we need now is to pass this so that we can transfer these roads to Northfield and the state of New Hampshire will not have to maintain or plow them in the future. Thank you very much.

**Adopted.**

**Ordered to third reading.**

**HB 834-L**, relative to River Road and Nimble Hill Road in the town of Newington. Transportation Committee. Ought to pass, Vote 4-0. Senator Morse for the committee.

SENATOR MORSE: Thank you Mr. President. I move HB 834 ought to pass. This bill reclassifies portions of River Road and Nimble Road in Newington as Class V highways. This is the Transportation Committee's third and final road reclassification bill.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 61**, relative to the taking of migratory game birds in the Connecticut River zone. Wildlife and Recreation Committee. Ought to pass, Vote 2-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you Mr. President. I move HB 61 ought to pass. This bill provides reciprocity with Vermont for the taking of migratory game birds within the Connecticut River Zone in New Hampshire. The state of Vermont provided New Hampshire with similar reciprocity last year. House Bill 61 is the culmination of years of work between the United States Wildlife Service and the New Hampshire and Vermont's Fish and Game Departments. Together these groups have defined the Connecticut River Zone boundaries for the purposes of hunting and declared that only those individuals in possession of a valid New Hampshire or Vermont resident hunting license will be allowed to hunt in the river zone. The Wildlife Committee recommends ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 156**, relative to weights and measures. Wildlife and Recreation Committee. Ought to pass, Vote 2-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you Mr. President. I move HB 156 ought to pass. This bill updates New Hampshire's standards for weights and measures to those defined by the National Conference on Weights and Measures. Operational guides along with the specifications, tolerances, and other technical requirements for standards used in the testing or calibration of commercial weighing and measuring devices will now be uniform throughout the state and the nation. The bill was requested by the Department of Agricultural, Markets, and Food, and will take effect 60 days after passage. We move ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 469**, relative to areas of the state for hunting by crossbow. Wildlife and Recreation Committee. Ought to pass, Vote 2-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you Mr. President. I move HB 469 ought to pass. This bill adds the crossbow to the list of appropriate firearms for hunting wild deer in certain cities and towns in New Hampshire as current law restricts the use of the crossbow. House Bill 469 also prohibits having or carrying a cocked crossbow in or on a motor vehicle, OHRV, boat, aircraft, or other craft that is in motion and clarifies Hooksett's boundaries for the purposes of hunting. The Wildlife Committee recommends ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 678-FN**, relative to penalties for operation of OHRVs after suspension of driving privileges for certain motor vehicle offenses. Wildlife and Recreation Committee. Ought to pass, Vote 2-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you Mr. President. I move HB 678 ought to pass. This bill will make an individual guilty of a misdemeanor if they operate an OHRV after their motor vehicle license or driving privileges have been suspended or revoked for operating under the influence of drugs or alcohol, reckless driving, aggravated DWI, or negligent homicide. House Bill 678 is simply a housekeeping bill to update the OHRV laws and put them in line with motor vehicle penalty provisions. Thank you.

**Adopted.**

**Ordered to third reading.**

### **MOTION TO REMOVE FROM THE TABLE**

Senator Below moved to have **SB 209**, relative to permissible campaign contributions by business organizations and labor unions taken off the table.

**Question is on the motion to take off the table.**

**Recess.**

**Out of recess.**

**A roll call was requested by Senator Below.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Morse, Prescott.**

**Yeas: 6 - Nays: 15**

**Motion failed.**

### **REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

**SB 14**, relative to vacancies in county offices and the powers of the Belknap County Recreation Area Commission.

Senator D'Allesandro moved adoption.

**Adopted.**

## RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be by this resolution read a third time and all titles be the same as adopted, and that they be passed at the present time

**Adopted.**

## LATE SESSION

### Third Reading and Final Passage

**SB 23-FN**, allowing veterans the right to purchase credit in the retirement system for certain service in the armed forces.

**SB 35**, relative to the transfer and exchange of certain state-owned land for certain land owned by the Manchester water works.

**SB 42**, relative to charitable contributions by insurance agents.

**SB 54-FN-L**, relative to the local inventory of property values for assessment of property taxes.

**SB 58-FN-A**, relative to the net operating loss under the business profits tax.

**SB 63-FN-A-L**, relative to establishing community reinvestment and opportunity zones and granting business tax credits for investments in projects in such zones.

**SB 70**, establishing a commission to study implementing a recommendation of the New Hampshire estuaries project management plan.

**SB 78-FN**, establishing the New Hampshire health care information council.

**SB 80**, relative to vocational education and the automotive technology curriculum.

**SB 95-FN-L**, relative to the development of workforce housing within municipalities.

**SB 96-FN**, establishing a pharmacy discount program for seniors and disabled persons and making an appropriation therefor.

**SB 101-FN**, relative to unemployment compensation.

**SB 107-FN-A-L**, establishing a statewide education accountability system.

**SB 114**, implementing an unsafe school choice option for pupils attending schools which have been classified as persistently dangerous and authorizing the state board of education to implement a complaint process to address school safety and school violence issues in nonpublic schools.

**SB 116**, establishing a committee to study methods to prevent or reduce the high school dropout rate.

**SB 119**, relative to medical and hospital liability insurance.

**SB 131**, establishing a committee to study the system of health care safety net providers in New Hampshire, and options for improving access to primary and preventive care for the uninsured and underinsured.

**SB 132-FN-A**, extending the Parents as Teachers program in Sullivan county and making an appropriation therefor.

**SB 136**, relative to liability for hazardous materials accidents.

**SB 138-FN**, clarifying the exemption from the interest and dividends tax for distributions from qualified tuition savings programs.

**SB 148-FN**, relative to the regulation of water treatment equipment installers by the plumber's board.

**SB 159-FN**, relative to milfoil and other exotic aquatic weeds.

**SB 168**, allowing school boards to adjourn to nonpublic session to consider pupil disciplinary matters.

**SB 184**, relative to reinsurance.

**SB 190**, relative to community living facilities.

**SB 193**, extending the report date for the commission on the education of the deaf and hard of hearing in New Hampshire and the commission on architecturally secure facilities and community shelter care facilities for juveniles.

**SB 221-FN**, relative to the offense of obstructing government administration by the use of simulated legal process.

**SB 222-FN-A**, relative to motor vehicle fees.

**SCR 4**, urging the New Hampshire congressional delegation to take appropriate action against modification of the Clean Air act if the result jeopardizes New Hampshire's ability to safeguard public health and protect environmental quality.

**HB 61**, relative to the taking of migratory game birds in the Connecticut River zone.

**HB 86**, relative to the membership of the permissible fireworks review committee.

**HB 101**, relative to qualifications for state offices and relative to vacancies in public offices.

**HB 126**, relative to posting statutes at polling places.

**HB 127**, establishing a committee to study the effectiveness and fairness of county government.

**HB 151**, authorizing the county convention to contract and fund performance audits of county departments.

**HB 156**, relative to weights and measures.

**HB 223**, relative to the temporary removal of inmates.

**HB 253**, relative to the design build concept for certain projects.

**HB 263**, establishing an oversight committee to review the allocation of funds disbursed for the developmental disabilities waitlist.

**HB 277-FN**, relative to an extended term of imprisonment for manslaughter and relative to jury findings which warrant an extended term of imprisonment.

**HB 305**, relative to time allowed for voting.

**HB 310**, establishing a commission to study child support issues.

**HB 321**, relative to ordinary and accidental death benefits in the city of Manchester employees contributory retirement system.

**HB 361-L**, permitting municipalities to form regional water districts.

**HB 469**, relative to areas of the state for hunting by crossbow.

**HB 498**, relative to 20-day vehicle registrations.

**HB 678-FN**, relative to penalties for operation of OHRVs after suspension of driving privileges for certain motor vehicle offenses.

**HB 833-L**, relative to Shaker Road and Bay Hill Road in the town of Northfield.

### ANNOUNCEMENTS

SENATOR BARNES (RULE #44): Thank you Mr. President. I would just like to congratulate this Senate Chamber because last week we had a long and drawn out discussion on the importance of kindergarten, and the town of Merrimack overwhelmingly, I believe about 70 percent of the vote, passed kindergarten this past week and now there is only 17 to go. I think the people of Merrimack probably listen to all of the conversations that came out of here. It must have seeped out of the windows. This Chamber should be congratulated. I am sure that we helped the town of Merrimack.

SENATOR D'ALLESANDRO: Thank you Mr. President. I want to be very attentive to the fact that the town of Raymond, Senator Barnes was on the school kindergarten, has approved kindergarten and that is super plus, and the town of Goffstown missed by 15 votes. Fifteen votes from taking kindergarten. So they were paying attention to Jack, but they weren't paying attention to me. I will work on it. Mr. President, I want to thank you for the photos that everybody received. I appreciate that. We all looked pretty good and sort of like the American dream brought to fruition. Thank you very much.

SENATOR PETERSON (RULE #44): Mr. President, I rise today to turn for a moment from our efforts to address the many pressing and absorbing issues facing our state and give voice in this Chamber to our gratitude for the progress to date of the events across the globe and to reflect for a moment on the blessings of living in a society where we enjoy individual rights and freedom, and often even presume them to be our birthright. As I arose this morning, the sounds of the Iraqi people rejoicing in new-found freedoms poured from my radio, and in that predawn moment of solitude (a rare commodity in our busy household) an involuntary tear came to my eye. The radio announcer opined, ... "we who have grown up in freedom perhaps cannot fully comprehend," ... what these sons and daughters of this ancient land are feeling today. He cautioned that much danger remains to be faced and great work remains to be done in the heated desert. I am sure that is all true, and yet there is an undeniable something in the sound that rose from the crowd in Baghdad's streets. It is the sound, Mr. President, of hope. The hope of freedom, of human dignity, and of peace. Here in New Hampshire, we are known as the First in the Nation State. And indeed, we were the first state in the nation to declare our independence from Great Britain on January 5, 1776 in the little town called Exeter, right near Senator Prescott's hometown. On July 4, 1776, Josiah Bartlett, William Whipple and Matthew Thornton signed the Declaration of Independence of the Thirteen States and pledged their "lives, their fortunes and their sacred honor" in defense of freedom, a resolve which has often been tested in the intervening 227 years and counting. The crown of this freedom we defend is found in our right to express contrary opinions. In our nation, we recognize our diversity and respect for human rights as our greatest strength. But today, as Americans once again stand in the breach in



defense of freedom in a land half-way around the globe, we join together in honoring the sacrifice of those who stand in our stead and hope for their safe return as soon as possible. Here in the region where the shot heard around the world was sounded, here in the state where the great experiment of liberty began, let us not pass this day without a word of welcome to those who are now, hour by hour and day by day, seeing their opportunity approach to at long last join the family of free nations. Many challenges will lie ahead, and this should surprise no one. For freedom has ever been a challenging business for all who strive to achieve it and to protect it. And yet the cries of joy are rising in a troubled land today. May our efforts succeed in hastening their journey to a better life. Thank you Mr. President.

SENATOR CLEGG (RULE #44): Thank you Mr. President. While many of us have seen on television how some people overseas don't seem to remember, or at least we don't think that they remember what we did in World War II, I have an exception. My father-in-law was in the 10<sup>th</sup> Mountain Division and helped liberate Italy in the mountains during World War II. There he had met a young boy who has kept in touch with him since World War II. His name is Franco Lancellotti. What he did was, he sent a small note, and of course he has broken English. He says, "Sorry for my English, but it is the only one I know. I am writing to let you know my feelings about this war in Iraq. I am mortified and I feel ashamed for the ones that forgot what the America soldiers did for us to make Europe free." It says here, "Some one shows at the window, the flag of peace. I exhibit your flag." Here is a picture of his house in Italy where he proudly displays the American flag and every day he thanks the Americans for what they have done and criticizes those who don't remember what it is that our veterans from World War II did for all of Europe. Thank you.

### RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, processing Enrolled Bill Reports and Amendments, and receiving House Messages, and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

**In recess to the Call of the Chair.**

**Out of Recess.**

**April 15, 2003  
2003-1292-EBA  
08/09**

### Enrolled Bill Amendment to HB 277-FN

The Committee on Enrolled Bills to which was referred HB 277-FN

**AN ACT** relative to an extended term of imprisonment for manslaughter and relative to jury findings which warrant an extended term of imprisonment.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

### FOR THE COMMITTEE

### Explanation to Enrolled Bill Amendment to HB 277-FN

This enrolled bill amendment makes technical corrections.

**Enrolled Bill Amendment to HB 277-FN**

Amend RSA 651:6, III as inserted by section 1 of the bill by replacing line 1 with the following:

III. If authorized by paragraph I or II, and if notice of the possible application of this section

Amend RSA 651:6, III(c) as inserted by section 1 of the bill by replacing line 1 with the following:

(c) Manslaughter, a minimum to be fixed by the court of not more than 20 years and a

Senator Eaton moved adoption.

**Adopted.**

**April 15, 2003**

**2003-1281-EBA**

**06/01**

**Enrolled Bill Amendment to HB 126**

The Committee on Enrolled Bills to which was referred HB 126

AN ACT relative to posting statutes at polling places.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE****Explanation to Enrolled Bill Amendment to HB 126**

This enrolled bill amendment makes a technical correction to the bill.

**Enrolled Bill Amendment to HB 126**

Amend RSA 658:29 as inserted by section 1 of the bill by replacing line 9 with the following:

*appropriate official if the voter believes that his or her voting rights are being violated.*

Senator Eaton moved adoption.

**Adopted.**

**April 16, 2003**

**2003-1313-EBA**

**03/09**

**Enrolled Bill Amendment to HB 61**

The Committee on Enrolled Bills to which was referred HB 61

AN ACT relative to the taking of migratory game birds in the Connecticut River zone.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE****Explanation to Enrolled Bill Amendment to HB 61**

This enrolled bill amendment makes a grammatical clarification and corrects a reference in the bill.

**Enrolled Bill Amendment to HB 61**

Amend RSA 209:5-a, I as inserted by section 1 of the bill by replacing it with the following:

I. A person holding a Vermont resident hunting license which allows the taking of migratory waterfowl and coots, may take migratory game

birds, as provided in RSA 209:5, except woodcock and snipe, from the Connecticut River zone, provided the state of Vermont grants the same right to a person holding a New Hampshire resident hunting license and waterfowl stamp which allows the taking of migratory game birds in the Connecticut River zone in Vermont pursuant to Vt. Stat. Ann. tit. 10, sec. 4909.

Senator Eaton moved adoption.

**Adopted.**

**April 16, 2003**  
**2003-1310-EBA**  
**03/01**

**Enrolled Bill Amendment to HB 469**

The Committee on Enrolled Bills to which was referred HB 469  
AN ACT relative to areas of the state for hunting by crossbow.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE**

**Explanation to Enrolled Bill Amendment to HB 469**

This enrolled bill amendment inserts omitted statutory text.

**Enrolled Bill Amendment to HB 469**

Amend RSA 208:3, V as inserted by section 2 of the bill by replacing it with the following:

V. Strafford County: Durham; Lee; Madbury; Dover; Rollinsford; Somersworth.

Senator Eaton moved adoption.

**Adopted.**

**April 10, 2003**  
**2003-1272-EBA**  
**03/10**

**Enrolled Bill Amendment to HCR 8**

The Committee on Enrolled Bills to which was referred HCR 8

A RESOLUTION urging the United States Congress to improve the prescription drug program provided to veterans.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE**

**Explanation to Enrolled Bill Amendment to HCR 8**

This enrolled bill amendment clarifies a reference in the resolution.

**Enrolled Bill Amendment to HCR 8**

Amend the second paragraph after the title of the resolution by replacing line 1 with the following:

Whereas, Congress has authorized an increase in the medication copayment from \$2 to \$7 and applied it to each

Senator Eaton moved adoption.

**Adopted.**

**REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

**HB 69**, relative to the reinstatement of expired licenses for architects.

**HB 76**, relative to neighborhood electric vehicles.

**HB 91**, relative to the telecommunications planning and development initiative and advisory committee.

**HB 99**, relative to absentee ballot requests.

**HB 128**, relative to the treatment of horses.

**HB 233**, relative to the nuclear planning and response program.

**HB 246**, relative to availability of absentee voting applicant lists.

**HB 260**, relative to checklists used on election day.

**HB 270**, relative to issuing drivers' licenses to aliens temporarily residing in the state.

**HB 271**, relative to walking disability plates and placards.

Senator D'Allesandro moved adoption.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 25-FN-A**, making appropriations for capital improvements.

**INTRODUCTION OF HOUSE BILL**

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **25** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

**First and Second Reading and Referral**

**HB 25-FN-A**, making appropriations for capital improvements. (Capital Budget)

**HOUSE MESSAGE**

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 211**, relative to town clerk fee deposit requirements.

**HB 218**, relative to the definition of beneficially interested person.

**HB 222**, specifying the term for physicians and dentists at the department of corrections and relative to the special school district within the department of corrections.

**HB 228**, relative to conduct after an accident.

**HB 245**, relative to child custody decisions.

**HB 258**, relative to the community-technical college system.

**HB 262**, relative to operators of bingo and games of chance.

**HB 287**, establishing a professional malpractice claims study commission.

**HB 296**, relative to settlement agreements in medical malpractice suits.

**HB 298**, relative to physical child custody decisions.

**HB 311**, repealing the obligation to provide persons applying for a marriage license with a list of family planning services and with brochures on fetal alcohol syndrome and the human immunodeficiency virus.

**HB 332-FN**, relative to the use of prerecorded telephone messages by candidates and political committees.

**HB 357-FN**, relative to child support insurance settlement intercept.

**HB 360-FN-A-LOCAL**, establishing a civil legal services fund consisting of court filing fee surcharges for the purpose of establishing and operating a New Hampshire Legal Assistance office in Nashua and relative to a New Hampshire Legal Assistance pilot project on serving the near-poor.

**HB 364-FN**, relative to the use of automatic telephone dialing systems for political advocacy.

**HB 384**, relative to financial affidavits in domestic relations cases.

**HB 389**, relative to victim impact statements and deleting the prohibition on funding certain positions in the office of victim/witness assistance with funds from the victims' assistance fund.

**HB 402**, relative to child passenger restraints.

**HB 410**, relative to disclosure of information for purposes of background investigations by criminal justice agencies of applicants for police, corrections, and security employment.

**HB 415**, raising the age of the speedy trial requirement from 13 years of age to 16 years of age in sexual assault cases involving minors and relative to the exclusive authority of the state over the regulation of firearms, ammunition, and components thereof.

**HB 464-FN**, establishing a criminal penalty for facilitating a drug or underage alcohol house party.

**HB 515**, excluding certain agreements between fish and game licensees and landowners from the right-to-know law.

**HB 593-FN-LOCAL**, relative to solid waste facilities in small towns.

**HB 627-FN**, relative to domicile for voting purposes and penalties for voter fraud.

**HB 709-FN**, relative to nursing homes in receivership.

**HB 753**, establishing the fourth Monday in April as General John Stark Day.

**HB 758-FN**, relative to the criteria for medicaid eligibility.

**HB 811**, relative to limiting the liability of manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from misuse.

## INTRODUCTION OF HOUSE BILLS

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **211 - 811** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

**First and Second Reading and Referral**

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 211**, relative to town clerk fee deposit requirements. (Executive Departments and Administration)

**HB 218**, relative to the definition of beneficially interested person. (Banks)

**HB 222**, specifying the term for physicians and dentists at the department of corrections and relative to the special school district within the department of corrections. (Executive Departments and Administration)

**HB 228**, relative to conduct after an accident. (Insurance)

**HB 245**, relative to child custody decisions. (Judiciary)

**HB 262**, relative to operators of bingo and games of chance. (Ways and Means)

**HB 287**, establishing a professional malpractice claims study commission. (Insurance)

**HB 296**, relative to settlement agreements in medical malpractice suits. (Judiciary)

**HB 298**, relative to physical child custody decisions. (Judiciary)

**HB 311**, repealing the obligation to provide persons applying for a marriage license with a list of family planning services and with brochures on fetal alcohol syndrome and the human immunodeficiency virus. (Public Affairs)

**HB 332-FN**, relative to the use of prerecorded telephone messages by candidates and political committees. (Interstate Cooperation)

**HB 357-FN**, relative to child support insurance settlement intercept. (Judiciary)

**HB 360-FN-A-LOCAL**, establishing a civil legal services fund consisting of court filing fee surcharges for the purpose of establishing and operating a New Hampshire Legal Assistance office in Nashua and relative to a New Hampshire Legal Assistance pilot project on serving the near-poor. (Public Affairs)

**HB 364-FN**, relative to the use of automatic telephone dialing systems for political advocacy. (Internal Affairs)

**HB 384**, relative to financial affidavits in domestic relations cases. (Judiciary)

**HB 389**, relative to victim impact statements and deleting the prohibition on funding certain positions in the office of victim/witness assistance with funds from the victims' assistance fund. (Executive Departments and Administration)

**HB 402**, relative to child passenger restraints. (Transportation)

**HB 410**, relative to disclosure of information for purposes of background investigations by criminal justice agencies of applicants for police, corrections, and security employment. (Executive Departments and Administration)

**HB 415**, raising the age of the speedy trial requirement from 13 years of age to 16-years of age in sexual assault cases involving minors and relative to the exclusive authority of the state over the regulation of firearms, ammunition, and components thereof. (Judiciary)

**HB 464-FN**, establishing a criminal penalty for facilitating a drug or underage alcohol house party. (Judiciary)

**HB 515**, excluding certain agreements between fish and game licensees and landowners from the right-to-know law. (Wildlife and Recreation)

**HB 593-FN-LOCAL**, relative to solid waste facilities in small towns. (Environment)

**HB 627-FN**, relative to domicile for voting purposes and penalties for voter fraud. (Internal Affairs)

**HB 709-FN**, relative to nursing homes in receivership. (Public Institutions, Health and Human Services)

**HB 753**, establishing the fourth Monday in April as General John Stark Day. (Public Affairs)

**HB 758-FN**, relative to the criteria for medicaid eligibility. (Public Affairs)

**HB 811**, relative to limiting the liability of manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from misuse. (Wildlife and Recreation)

### HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 639-FN-LOCAL**, relative to receiving legislative body approval though warrant articles before a municipality may continue a program initiated under a grant.

**HB 646-FN**, relative to liquor licenses and fees.

**HB 654-FN**, relative to criminal liability for the destruction or disconnection of a smoke detector by a tenant in a rental dwelling.

**HB 659-FN**, relative to penalties for failure to obey a subpoena or summons.

**HB 661-FN-LOCAL**, relative to Westport Village Road in the town of Swanzey.

**HB 670-FN**, establishing a procedure for release by a state agency of statistical information for research purposes.

**HB 711-FN**, relative to the regulation of retail installment sales of motor vehicles.

**HB 718-FN**, relative to endangering the welfare of a minor and relative to criminal responsibility for the commission of certain acts.

**HB 725**, relative to fraternal benefit societies.

**HB 749**, relative to the description in a criminal complaint of the party accused.

**HB 768**, establishing a committee to study the flow in the Connecticut River and the effect of the flow on water levels in Lake Francis and the Connecticut Lakes, and to study the use of certain state-owned property along the Baker River.

**HB 776**, relative to emergency medical care for pregnant women.

**HB 796-FN-LOCAL**, relative to the taxation of manufactured housing.

**HB 798**, relative to gifts by fiduciaries.

**HB 806**, enabling municipalities to adopt a property tax exemption for deaf or severely hearing impaired persons.

**HB 807-FN**, increasing the filing fees for a fund raising counsel and a paid solicitor of a charitable trust.

**HB 808**, relative to proof of residency and resident tax payment for receiving resident fish and game licenses.

**HB 816**, making technical corrections to the securities laws.

**HB 817**, relative to the regulation of first and second mortgage brokers and mortgage servicers.

**HB 825**, establishing a committee to study methods of safely reducing the prison population in the state.

**HB 829**, relative to ward boundaries in Manchester and Nashua to be used in state elections.

**HCR 15**, relative to relaxing air quality standards by the United States Environmental Protection Agency.

### INTRODUCTION OF HOUSE BILLS

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **639 – HCR 15** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 639-FN-LOCAL**, relative to receiving legislative body approval though warrant articles before a municipality may continue a program initiated under a grant. (Internal Affairs)

**HB 646-FN**, relative to liquor licenses and fees. (Executive Departments and Administration)

**HB 654-FN**, relative to criminal liability for the destruction or disconnection of a smoke detector by a tenant in a rental dwelling. (Public Affairs)

**HB 659-FN**, relative to penalties for failure to obey a subpoena or summons. (Judiciary)

**HB 661-FN-LOCAL**, relative to Westport Village Road in the town of Swansey. (Transportation)

**HB 670-FN**, establishing a procedure for release by a state agency of statistical information for research purposes. (Internal Affairs)

**HB 711-FN**, relative to the regulation of retail installment sales of motor vehicles. (Transportation)

**HB 718-FN**, relative to endangering the welfare of a minor and relative to criminal responsibility for the commission of certain acts. (Judiciary)

**HB 725**, relative to fraternal benefit societies. (Insurance)

**HB 749**, relative to the description in a criminal complaint of the party accused. (Judiciary)



**HB 768**, establishing a committee to study the flow in the Connecticut River and the effect of the flow on water levels in Lake Francis and the Connecticut Lakes, and to study the use of certain state-owned property along the Baker River. (Wildlife and Recreation)

**HB 776**, relative to emergency medical care for pregnant women. (Insurance)

**HB 796-FN-LOCAL**, relative to the taxation of manufactured housing. (Public Affairs)

**HB 798**, relative to gifts by fiduciaries. (Banks)

**HB 806**, enabling municipalities to adopt a property tax exemption for deaf or severely hearing impaired persons. (Ways and Means)

**HB 807-FN**, increasing the filing fees for a fund raising counsel and a paid solicitor of a charitable trust. (Banks)

**HB 808**, relative to proof of residency and resident tax payment for receiving resident fish and game licenses. (Wildlife and Recreation)

**HB 816**, making technical corrections to the securities laws. (Banks)

**HB 817**, relative to the regulation of first and second mortgage brokers and mortgage servicers. (Banks)

**HB 825**, establishing a committee to study methods of safely reducing the prison population in the state. (Executive Departments and Administration)

**HB 829**, relative to ward boundaries in Manchester and Nashua to be used in state elections. (Internal Affairs)

**HCR 15**, relative to relaxing air quality standards by the United States Environmental Protection Agency. (Energy and Economic Development)

### LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*April 17, 2003*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good Morning. There are three main ways to make a cup of coffee – instant, drip and percolated. Those same three methods are also used in the realm of political leadership and the crafting of legislation, and lobbying too, I might add – instant, drip and percolated. When it comes to coffee, scooping a spoonful of previously prepared granules and dumping them into a cup of hot water is the easiest and quickest way. It produces a coffee colored cup of liquid that ranges from mediocre to unmentionable in quality. The drip method takes a bit more thought, planning and time as it passes the hot water through the grounds, letting the flavor of the beans be absorbed. Usually, a pretty good cup of coffee results. Real coffee, however, is percolated – slowly, carefully and repeatedly, allowing the hot water be continually rewarmed, recirculated, modified, enriched and improved as the process proceeds. The best coffee is

the result. Any one of us, including you, can approach our tasks and our callings like we are making coffee – quickly, easily and with a fairly boring freeze dried result; or with a bit more patient, drip, drip, drip marination time with a pretty good outcome; or we can patiently percolate our lives and our decisions and let them be slowly and richly flavored by the wisdom and strength of all the wonder that surrounds us, resulting with a product that ignites and enhances and enriches. Please, make our coffee carefully.

Let us pray:

*Gracious God, You are the One who gives flavor to our lives and to all of our actions and decisions. Preserve us from a shrink wrapped, freeze dried way of living and deciding. Save us from dripping too quickly through our days and our decisions, with a watery result. Rather let us percolate in the strong stuff of Your love and Your will, knowing that the product will be out of this world.* Amen.

Senator Larsen led the Pledge of Allegiance.

### INTRODUCTION OF GUESTS COMMITTEE REPORTS

**HB 183**, relative to a distribution from a decedent's estate to a minor. Banks Committee. Ought to pass, Vote 4-0. Senator Peterson for the committee.

SENATOR PETERSON: Thank you Mr. President. I move HB 183 ought to pass. This legislation is a request of the Probate Court. There is currently a conflict between statutes. One statute states that if the distribution of the estate of a minor without a guardian exceeds \$10,000, the probate court must authorize the transfer. While yet another statute states that a minor without a guardian may receive funds not exceeding \$5,000. This legislation makes the two provisions uniform and allows a transfer of funds from the executor or administrator less than \$10,000 to avoid going to probate court for an approval. The Banks Committee asks your support for the motion of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 186**, relative to the effect of divorce or annulment upon trusts. Banks Committee. Ought to pass, Vote 4-0. Senator Peterson for the committee.

SENATOR PETERSON: Thank you Mr. President. I move HB 186 ought to pass. This legislation addresses circumstances where a person establishes a trust and appoints property or assets to their spouse but fails to change the trust after a divorce or annulment. If the grantor dies the property or assets appointed does not get distributed to that spouse unless the trust expressly states that. The court then treats that spouse as predeceasing the grantor. This legislation most applies to individuals who simply forget to change their trust once a divorce or annulment has taken place. Similar legislation has already been passed several years ago pertaining to wills and this is a follow up to that law. The Banks Committee asks your support for the motion of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 436**, relative to the acquisition of Connecticut Valley Electric Company and electric utility restructuring. Energy and Economic Development Committee. Ought to pass, Vote 5-0. Senator Odell for the committee.

SENATOR ODELL: Thank you Mr. President. I would like to move that HB 436 ought to pass as was unanimously recommended by the Senate Committee on Energy and Economic Development. And following that Mr. President, I would like to bring forward a floor amendment.

Senator Odell offered a floor amendment.

Sen. Odell, Dist. 8

**April 16, 2003**

**2003-1307s**

**03/09**

### **Floor Amendment to HB 436**

Amend the title of the bill by replacing it with the following:

AN ACT relative to the acquisition of Connecticut Valley Electric Company and electric utility restructuring and relative to the real estate and personal property tax exemption.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 Real Estate and Personal Property Tax Exemption; Public Property. Amend RSA 72:23, I(a) to read as follows:

I.(a) Lands and the buildings and structures thereon and therein and the personal property owned by the state~~[-cities, towns, school districts, and village districts]~~ **of New Hampshire or by a New Hampshire city, town, school district, or village district** unless said real or personal property is used or occupied by other than the state or a city, town, school district, or village district under a lease or other agreement the terms of which provide for the payment of properly assessed real and personal property taxes by the party using or occupying said property. The exemption provided herein shall apply to any and all taxes against lands and the buildings and structures thereon and therein and the personal property owned by the state, cities, towns, school districts, and village districts, which have or may have accrued since March 31, 1975, and to any and all future taxes which, but for the exemption provided herein, would accrue against lands and buildings and structures thereon and therein and the personal property owned by the state, cities, towns, school districts, and village districts.

**2003-1307s**

### **AMENDED ANALYSIS**

This bill makes changes to existing law necessary to facilitate the acquisition of Connecticut Valley Electric Company, Inc. by Public Service Company of New Hampshire. This bill also clarifies the applicability of the real estate and personal property tax exemption for public property.

SENATOR ODELL: Thank you Mr. President. This amendment is a clarification of the tax exemptions for property, and it specifically relates to property, in this particular case, owned by a private company. It is a Connecticut River Hydro Plant. The town of Walpole is currently receiving property taxes from this plant and there is a move afoot to have a

community in Vermont buy that plant, and the town of Walpole would like to just have reassurance that they will continue to receive the real estate property taxes on that particular facility. So I would appreciate your support of this amendment.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

Senator Foster Rule #42 on HB 436.

**HB 732-FN**, relative to fines for forestry law violations, and deceptive forestry business practices. Energy and Economic Development Committee. Ought to pass with amendment, Vote 5-0. Senator Below for the committee.

**Energy and Economic Development**

**April 10, 2003**

**2003-1266s**

**08/03**

**Amendment to HB 732-FN**

Amend the bill by replacing section 9 with the following:

9 Effective Date. This act shall take effect upon its passage.

SENATOR BELOW: Thank you Mr. President. I move that HB 732 ought to pass with amendment, as was unanimously recommended by the Senate Committee on Energy and Economic Development. The Division of Forests and Lands of DRED asked that this bill be brought forward in response to efforts on their part to improve their operation. This bill will allow the division to streamline its process for handling payment of violation fines, instead of requiring those who violate forestry regulations to appear in court, people will now have the option of mailing in their fine, as long as the violation does not qualify as a misdemeanor or felony. The bill further refines what qualifies as different types of forestry violations, particularly clarifying deceptive forestry business practices that may be a misdemeanor or a Class B felony. It also revises a couple of technical definitions pertinent to the division. The committee unanimously recommends that this bill ought to pass with amendment, and I ask the full Senate to act upon this recommendation.

**Amendment adopted.**

Senator Johnson offered a floor amendment.

Sen. Johnson, Dist. 2

**April 17, 2003**

**2003-1322s**

**08/01**

**Floor Amendment to HB 732-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to fines for forestry law violations, relative to deceptive forestry business practices, establishing a commission to study setback requirements for land application of septage, biosolids, and short paper fibers, and extending the temporary use of septage, biosolids, and short paper fiber by certain persons.

Amend the bill by replacing all after section 8 with the following:

9 Commission Established. There is established a commission to study setback requirements for land application of septage, biosolids, and short paper fiber.

10 Membership and Compensation.

I. The members of the commission shall be as follows:

(a) Two members of the senate, appointed by the president of the senate.

(b) Two members of the house of representatives, appointed by the speaker of the house of representatives.

(c) One member of the rivers management advisory committee, appointed by such committee.

(d) Two members selected by the Connecticut River Joint Commissions, Upper Merrimack River Local Advisory Committee, and Pemigewasset River Local Advisory Committee.

(e) One member from the New Hampshire Rivers Council, appointed by the council.

(f) One representative from the New Hampshire department of environmental services, rivers management and protection program, appointed by the commissioner of environmental services.

(g) One representative from the New Hampshire department of environmental services, sludge and septage program, appointed by the commissioner of environmental services.

(h) One representative from the New Hampshire department of agriculture, markets, and food, appointed by the commissioner of agriculture, markets, and food.

(i) One representative selected by the university of New Hampshire cooperative extension.

(j) One farmer selected by the New Hampshire Farm Bureau Federation.

(k) The executive director of the New Hampshire Farm Bureau Federation, or designee.

(l) One member from the New England Biosolids and Residuals Association (NEBRA), appointed by NEBRA.

(m) One member of a land application company, selected by NEBRA.

(n) One member of the Natural Resource Conservation Service, appointed by such organization.

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

11 Duties. The commission shall review literature and research on the effects of land application of septage, biosolids, and short paper fiber adjacent to surface waters, especially concerning surface run-off and water quality. The commission shall propose criteria for setbacks for land application of septage, biosolids, and short paper fiber from designated rivers in New Hampshire, or recommend specific studies to address gaps in existing research findings.

12 Chairperson; Quorum. The members of the study commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section.

13 Report. The commission shall submit an interim report on or before November 1, 2003 and a final report on or before July 1, 2004 on its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library.

14 Sludge, Biosolids, and Short Paper Fiber; Temporary Use: Amend 1998, 56:6 to read as follows:

56:6 Temporary Use Authorization. The septage and sludge land application restrictions contained in RSA 483:9, VI(c), RSA 483:9-a, VII(b), RSA 483:9-aa, VII(b), and RSA 483:9-b, VII(b) shall not apply until ~~[5 years after the effective date of this act]~~ **July 1, 2003** to any land upon which septage or sludge has been spread in accordance with all applicable rules adopted by the federal Environmental Protection Agency and the New Hampshire department of environmental services, during any portion of the 3-year period prior to January 1, 1998. In addition, there shall be no termination of this restriction exemption for qualifying land that is used for scientific research on septage or sludge. Any continued application of septage and sludge pursuant to this section shall comply with all applicable federal and state laws and any best management practices published by the university of New Hampshire cooperative extension.

15 Effective Date. This act shall take effect upon its passage.

**2003-1322s**

### AMENDED ANALYSIS

This bill:

I. Requires the commissioner of the department of resources and economic development to establish a unified fine schedule and allows pleas to be entered by mail in lieu of court appearances.

II. Clarifies deceptive forestry business practices, and provides for the dissemination of information on the normal yield tax.

III. Establishes a commission to study setback requirements for septage, biosolids, and short paper fiber.

IV. Extends the temporary use of septage, biosolids, and short paper fiber by certain persons.

SENATOR JOHNSON: Mr. President, I have a last minute floor amendment to HB 732. I believe it is being passed out. While it is being passed out, what this is, is a timing issue for farmers who are putting their corn crop out, which I understand takes 100 days after they plant. This also takes into account SB 87, which was a biosolids bill that was in the Environment Committee. We have changed that into a study committee. We voted it out of the Senate and it went over to the House and the House found some technical changes as well as one committee that they had the commissioner not the designee, they added the word "designee". Then we got together with the House and they would be willing to concur with this amendment if it passes this body. So I ask for your approval of the floor amendment 1322.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 182**, relative to unclaimed shares and advancements to heirs. Insurance Committee. Ought to pass, Vote 3-0. Senator Prescott for the committee.

SENATOR PRESCOTT: Thank you Mr. President. I move that HB 182 ought to pass as was recommended by the Senate Insurance Committee. This bill takes care of two items of concern. First, it adjusts the thresh-

old for unclaimed shares from an estate that are turned over to the state after a certain period of time. Currently, that threshold rests at \$50. This bill would raise that to \$5,000. The second item the bill changes, relates to regulations surrounding "intestates." An intestate occurs when a person dies without a will. His or her financial assets may then be distributed to family members, up to four degrees removed. Under current law, any intestate distribution to an heir must go through a process by which any gifts previously given by that person who died to his or her heirs are deducted from the value of that intestate distribution. This bill would allow these gifts to be exempted from any deductions, unless otherwise indicated by the benefactor that they should be deducted. The committee recommends that this bill ought to pass. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 356-FN**, relative to including medical benefits costs in the purchase of creditable service in the retirement system. Insurance Committee. Ought to pass, Vote 4-0. Senator Flanders for the committee.

**SENATOR FLANDERS:** Thank you Mr. President and members of the Senate. This bill is a way to protect our retirement system. As more and more people are getting into the retirement system, the monies in the, especially the health benefits they are getting somewhat shallower. Basically what this says is that if someone is in the retirement system and has not elected to take medical benefits, but at some point decides to take medical benefits, they have to buy back their benefit. In other words, if you have a situation or a person who is in the retirement system and has not chosen to take medical, and then decides that they want the medical, they have to buy back their time. This protects those that are already in the medical system and it protects the system itself. We urge its passage. Thank you very much.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 669-FN**, relative to dental insurance benefits and eligibility for medical benefits for retired state employees. Insurance Committee. Ought to pass, Vote 3-0. Senator Martel for the committee.

**SENATOR MARTEL:** Thank you Mr. President. I move that HB 669 ought to pass, as was recommended by the Senate Insurance Committee. This bill, similar to the bill we just heard, will help to reduce future stress on the retirement system, while still allowing people such as our retired state employees, to enjoy most of its benefits. Under this bill, retired employees can continue their dental plan after they have left their place of employment. Under current law, these retired employees are only eligible to continue their coverage for 18 months under the COBRA plan. This bill also increases the number of years of employment that are required in order to be eligible for health insurance after retirement. We believe this change will save money for the retirement system in the long run. The committee voted this bill with a recommendation of ought to pass and I thank you Mr. President.

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist. 15

**April 17, 2003**

**2003-1323s**

**10/01**

**Floor Amendment to HB 669-FN**

Amend the title of the bill by replacing it with the following:

AN ACT relative to participation in dental insurance benefits by retired state employees.

Amend the bill by deleting section 2 and renumbering the original section 3 to read as 2.

**2003-1323s**

**AMENDED ANALYSIS**

This bill allows retired state employees to participate at their own expense in the dental plan afforded state employees.

SENATOR LARSEN: Thank you Mr. President. I rise to offer a floor amendment. While we haven't had a lot of discussion on this issue in the Senate, it's one which we felt was an important policy change which needed to be discussed. The floor amendment recognizes the good part of HB 669, which is encouraging or enabling people to, at their own expense, buy into the group dental arrangement. Retired state employees thus being able to keep their dental health through their own payments. The second part of this bill however, is a major policy change which we believe will result in the state not being encouraged to hire older people into positions. What you will have is a system where a state employee would have to be 20 years in employment by the state before they qualify for health benefits. You will discourage people from coming to the state with experience if they are older, you will make it much longer to qualify for health benefits. We will have, probably as a result, more people who will be in this state, who in fact, are not insured through health insurance as a result of this. We believe that it is important policy and in fact, one which this Senate ought to carefully consider the effects on our ability to attract qualified state employees. So what the floor amendment does is remove that section of the bill which increases from ten years of creditable service, which is the current law, it increases it to 20 years for qualification. The rest of the bill remains the same and could go to Finance, it has no fiscal effect by removing this, but it has a significant effect on changing state policy. I ask for you to vote yes on floor amendment 1323.

**Recess.**

**Out of recess.**

SENATOR LARSEN: I just rise to point out the significant loss to the state in terms of attracting qualified employees. What would make a person over 50 want to come, move to this state, perhaps with COBRA benefits coming from their previous job, but then learning that even though they are moving to this state to lead a department or work at a high level, or even at a low level...someone who is coming to this state to give their service to the state with some qualifications, I think that our ability to attract qualified state employees is going to be significantly reduced if we increase this. The other question that I ask you is what will be the effect on the state retirement? There will be a large pension draw, I believe. There will be an incentive for state employees to quickly



go to retirement before this bill becomes law, particularly those with less than 20 years service. The issues here are big and I hope that Senate Finance looks at this carefully, but I think that we can set a precedent and a statement of Senate policy by saying that we are not going to do this in haste. It may be something which we need to look at more carefully. I would ask for a roll call on this amendment.

SENATOR BARNES: Senator Larsen, would you believe that I would like to answer your question? Why would people over 50 want to come to the state of New Hampshire? That is what you started this off with?

SENATOR LARSEN: There are lots of reasons for people to come to New Hampshire.

SENATOR BARNES: There are lots of reasons. They are coming because of the tax structure. They are coming because of the mountains and the seashore, and the great quality of life that we have in the state of New Hampshire. If you have questions on why they would come here over 50, that is the reason that they are coming here in my opinion.

SENATOR D'ALLESANDRO: Thank you Mr. President. As one of the co-sponsors of the original piece of legislation, I might say that the intent of the legislation was dramatically changed by this amendment. Well that happens in certain cases and I will speak to another case later on in this session. That is all that this piece of legislation was intended to do, was to allow people to pay for their dental benefit, by adding their dental benefit. Allow them to pay for it. What we have done is said, it is now going to take you 20 years to do something that you could have done in ten. One thing the state of New Hampshire has been proud of is its state employees. We say that we pay them less because of the fact that we provide good benefits for them. I agree with Senator Larsen. If a person is 50 years of age and comes to the state of New Hampshire and believes that they have a contribution to make, why should that contribution be eliminated by the fact that if they go to work for the state they can't get a benefit until they are 70? That is unfair. We are living longer. We are changing jobs at a faster rate in this society than ever before. People aren't staying on the same job as they did before. I can remember as a member of the Executive Council when we brought state employees with 50 years of service and 40 years of service. When the old Department of Public Works and Highways was loaded with lifers. That is not the case anymore. We have different demands. We require different things of people. We require expertise that in many ways we can't get through that evolving process. In the IT field for example. If we want a person who has had some experience, maybe a person who has been laid off. By the way, we eliminated 1,800 jobs in this country last year. Well maybe there is some expertise on the part of those people who would like to come to the state of New Hampshire, who would like to work for us. Why, in essence, should there be a denial of that opportunity? This bill was completely changed by this amendment. The House of Representatives took our initial idea or my initial idea and amended it and made it totally unacceptable to me, as one of the sponsors. I hope that you will support Sylvia Larsen's amendment, which restores the bill to its original form and just allows for one thing, people to pay for their dental. It allows people to pay. Not a bad idea. Why can't we do that. Thank you very much Mr. President.

SENATOR CLEGG: Thank you Mr. President. I rise in opposition to the amendment. I heard someone say that if we don't pass this amendment, people will rush to retire so that they get the benefit. Well the bill says

that as long as you have been hired and work for the state of New Hampshire prior to July 1, 2003, the main bill doesn't effect you. New hires will know when they are hired, that it is going to cost them...it is going to take them 20 years to get the medical benefits, but they are still vested in the retirement system in ten. It doesn't stop the fact that we are one of the best paid states when it comes to wages and benefits. They still get their health insurance, they still get dental insurance, they still get a great vacation system, a great holiday system, so we are not changing any of that. What we are saying is that anyone who is hired after July 1, 2003 will do so understanding that they can retire, but it takes 20 years to get fully paid medial benefits. Thank you Mr. President.

SENATOR GATSAS: Thank you Mr. President. Senator D'Allesandro, it talks about COBRA benefits in the committee report. Do you understand that the federal legislation says that COBRA benefits could be charged at a premium of two percent over what the premium is and that what this says is that once you convert or what the law says, that if you convert to a plan, that the premium could be higher than that two percent, so basically what we are doing with this bill is taking the federal law and just throwing the COBRA rights away for dental and saying that the COBRA rights would extend indefinitely?

SENATOR D'ALLESANDRO: I guess I don't read it the same way, but knowing that you are an expert, obviously I will defer to your expertise. But what I say is this: This bill allows them to purchase dental insurance at the state's group rate. At the present time, they purchase coverage through COBRA at the group rate for 18 months, but after 18 months they have to pay the individual rate which is extremely higher. This would negate that.

SENATOR GATSAS: So I assume with your answer that you are saying that we are taking the federal law and changing the COBRA rights for dental?

SENATOR D'ALLESANDRO: No, what I am saying is this Senator Gatsas: That this bill allows for the retirees to purchase their dental at the state's rate.

SENATOR GATSAS: Thank you.

SENATOR D'ALLESANDRO: Thank you.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator D'Allesandro.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 6 - Nays: 17**

**Floor amendment failed.**

**Question is on the adoption of the committee report of ought to pass.**

**A roll call was requested by Senator Clegg.**

**Senator Clegg withdrew his roll call motion.**

**Senator Below moved to divide the question.**

SENATOR EATON (In the Chair): Senator Below there are five sections in there, how do you propose to divide the question?

SENATOR BELOW: Section one and section two of the bill. There are only three sections to the bill. The third section is the effective date which would be shared by either section one or two of the bill.

SENATOR EATON (In the Chair): Would you please repeat that?

SENATOR BELOW: I said as I look at the bill there seem to be three sections to the bill. The third section being the effective date which would apply to either one or two.

**The Chair declared that it was divisible.**

**Question is on the adoption of section one.**

**Adopted.**

**Question is on the adoption of section two.**

**Adopted.**

**Question is on the adoption of section three.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 120**, relative to sessions for the correction of the checklist and sessions for changes of party registration. Internal Affairs Committee. Ought to pass, Vote 2-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. This is a very simple bill. The present law requires that Supervisors of the Checklist must stay open for two hours. Since statutes have changed in the past wherein people can register with the town clerk, and we have same day registration, we feel that it is not necessary that they remain open for two hours. This bill changes it so that they will remain open half an hour. We feel that this is satisfactory and makes sense based upon the change in statutes. Thank you very much.

SENATOR D'ALLESANDRO: Senator Flanders, if we are only going to keep it open for a half hour and they have to come in and read that affidavit, and they want to register at that time, are they going to be able to do all of that within that period of time?

SENATOR FLANDERS: Yes. If there are ten people there, they can stay open two hours. All that this says, is that they have to remain open...presently the law says that they have to open for two hours. They can remain open four hours. This says that they have to remain open for half an hour, but they can remain open for two hours.

SENATOR D'ALLESANDRO: Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 358-FN-L**, relative to recount fees in local elections. Internal Affairs Committee. Ought to pass, Vote 3-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move that HB 358 ought to pass. House Bill 358 establishes the same fees for local recounts involving candidates for school and town district offices as exists for state recounts. Currently local recounts cost \$10. House Bill 358

would base the recount cost on the percentage of the vote margin with a maximum cost of \$40. The Internal Affairs Committee recommends ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 149**, relative to patient rights and disclosures. Public Institutions, Health and Human Services Committee. Inexpedient to legislate, Vote 4-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. Due to new information that has come to the committee since we took this vote, we would like this bill to be recommitted to committee.

**Senator Boyce moved to recommit.**

**Adopted.**

**HB 149 is recommitted to committee.**

#### PARLIAMENTARY INQUIRY

SENATOR D'ALLESANDRO: Mr. President, I guess...is recommit a higher motion than inexpedient or under our rules, it is a higher motion, so that we don't have to go through our rule process?

SENATOR EATON (In the Chair): That is correct.

SENATOR D'ALLESANDRO: Thank you.

**HB 831**, establishing a New Hampshire end-of-life care study commission. Public Institutions, Health and Human Services Committee. Ought to pass with amendment, Vote 4-0. Senator Estabrook for the committee.

**Public Institutions, Health and Human Services**

**April 10, 2003**

**2003-1269s**

**01/03**

#### **Amendment to HB 831**

Amend subparagraphs I(n) and (o) of section 3 of the bill by replacing them with the following:

(n) The commissioner of the department of health and human services, or designee.

(o) The commissioner of the department of safety, or designee.

(p) A representative of the American Cancer Society, New England Division, appointed by such division.

Amend paragraph III of section 3 of the bill by replacing it with the following:

III. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

SENATOR ESTABROOK: Thank you Mr. President. I move ought to pass with amendment on HB 831. More often than not, causes of death are no longer simply sudden infectious diseases, rather than complicated and often multiple chronic illnesses that require a different approach to care near the end-of-life. Although advance directives such as Living Wills and Health Care Powers of Attorney have been available for years, the forms used in New Hampshire are not clearly defined and some patients continue to receive inappropriate care due to misunderstandings and miscommunication among both providers and patients. The commission envisioned in HB 831 involves groups which are currently looking

at these issues and will use the opportunity to better identify ways to carry out a patients wishes. The committee amended the bill by adding the American Cancer Society to the commission and to clarify that legislative members will receive mileage compensation. The committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

### **Amendment adopted.**

Senator O'Hearn offered a floor amendment.

Sen. O'Hearn, Dist. 12

**April 16, 2003**

**2003-1309s**

**01/10**

### **Floor Amendment to HB 831**

Amend the title of the bill by replacing it with the following:

AN ACT adding duties to the oversight committee on health and human services.

Amend the bill by replacing all after the enacting clause with the following:

1 Oversight Committee on Health and Human Services; Section Heading. Amend the section heading of RSA126-A:15 to read as follows:

126-A:15 ~~[Duty]~~ **Duties** of Oversight Committee.

2 New Paragraph; Duties Added. Amend RSA 126-A:15 by inserting after paragraph I the following new paragraph:

I-a. The committee shall also study the following issues:

(a) How to encourage the public to engage in advance care planning and ensure that advance care plans are honored by health providers, emergency medical providers, and other caregivers.

(b) How to increase understanding and access to palliative care services in all areas of the state.

(c) Identifying strategies to increase earlier participation in hospice services and remove barriers for those who desire hospice.

(d) Identifying the gaps in data collection or analysis that would provide an on-going means to assess access to good end-of-life care.

(e) Whether new educational programs are needed to train health professionals and other caregivers in end-of-life care needs.

(f) What are the priorities for improving end-of-life care in New Hampshire.

3 Effective Date. This act shall take effect upon its passage.

**2003-1309s**

### **AMENDED ANALYSIS**

This bill requires the oversight committee on health and human services to study end-of-life issues in addition to its other duties.

SENATOR O'HEARN: Thank you Mr. President. Mr. President I rise to offer a floor amendment to HB 831 and speak to my amendment. House Bill 831 is a worthy study and it is something that needs to be done. Looking through the chapter, and we have in the past, through our Public Institutions, Health and Human Services Committee, tried to fit in legislation of study committees and commissions into places that are already working on these issues, and pulling back some of the information that we have had in the past. We have an Oversight Committee that can look at this policy that is made up of three Senators and five legislators. These

members are members of the Public Institution or Health and Human Services Committee that we have in the House. I recommend that we use this Oversight Committee where their designation is to look at programs, policies and rules, analyzing the efficacy of selected programs, studying the characteristics of targeted populations, researching trends affecting program costs and participation and reviewing alternative approaches to programmatic and administrative concerns. This is a concern of our Health and Human Services Department. This is something that they have worked on. I believe that it is something that should go to this Oversight Committee, so both the House Committee and the Senate Committee can be up-to-date on what is needed to be done. Thank you.

SENATOR ESTABROOK: Thank you Mr. President. I would like to ask members to think back to our convocation earlier this morning when we talked about instant coffee and percolated coffee. I think that what is being proposed here in the floor amendment is the instant version. If you take a look at the duties of this committee, they are very extensive, and very specific to the subject matter. The Health and Human Services Oversight Committee on which I serve, has only legislative members. The members envisioned in this commission includes representatives of the Foundation for Healthy Communities, Hospice, the Hospital Association, the Medical Society, Home Care facilities, Council of Churches, Nurses Association, Bar Association, Association of Counties, Department of Safety. I think that it is very clear that what we are trying to do in the original bill here, as it came out of the House, was to bring together expertise to the table. Now granted in standing statutory Oversight Committee can bring in whomever they want for testimony, but I submit that is not the same as having these people appointed to a commission and stakeholders in the process, and bringing their expertise to bear together repeatedly. That would be a very different process than if we were to turn this duty over to the standing Oversight Committee for Health and Human Services. If you think about the scope of responsibilities that Health and Human Services is responsible for, and what therefore this standing Oversight Committee is responsible for, I think that it is quite unrealistic to expect them to engage in a study of the caliber, the percolated caliber, that would be available through this commission. I would strongly urge you to oppose the floor amendment and I would request a roll call.

SENATOR MARTEL: Thank you Mr. President. I strongly stand up and support this floor amendment. If we were to compare this legislation to great cups of coffee, there is nothing better than a demitasse or espresso, which is the greatest of coffees that you can drink. So this amendment does reach that point, and I strongly urge my fellow Senators to support this amendment. Thank you.

SENATOR LARSEN: Senator Martel, in chairing this committee where you have had hearings on the end-of-life care study commission, it appears that the Department of Health and Human Services was there in support, and that the American Cancer Society, and the Foundation for Healthy Communities were there, and that they pointed out some very detailed concerns, concerns that patients continue to find pain under treated and that advanced directives are not always respected. They indicated their support for this end-of-life study commission because there are a lot of details that those in the field are aware of when you are dealing with end-of-life issues that I am not sure legislators are as

interested in delving into. Do you think that the legislators on the Oversight Committee are going to have the dedication to advance directives discussions and pain treatment, as those who are in the field who may in fact be treating us or our loved ones in the future, and wouldn't it be advantageous for us to have those who are best qualified giving us some advice on end-of-care treatment? I have trouble seeing what you seem to think, which is that the legislators will do the same job? Do you think that they will?

SENATOR MARTEL: I believe so. In fact, I sit on that committee, the Oversight Committee. I surely intend to represent all of the issues that people may have regarding this matter and many other matters that they may have. I am sure that the people who sit on the committee with me, will have that same type of feeling. I will urge them if they don't.

SENATOR LARSEN: Thanks.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise to speak against the amendment and for the bill as introduced. What the bill calls for is a study to be turned in by 2004, and it brings to the committee, a level of expertise on every area. That level of expertise does not have as manifestation in the legislative committee, but in bringing these people together, we can get much better information and really, we are searching for data all of the time, we are looking for this. I mean that has been our quest around here because with better information we can make better decisions. It seems to me that the quality of this committee that is set up, the membership of this committee provides that, and we still retain two members of the House and two members of the Senate. So it is not something that should be done just bang-o. What's said here constantly, is that the Health and Human Service Committees are being asked to do this and being asked to do that, being asked to do this...this is another responsibility. We have got a good situation here. We have a good suggestion. We bring together a great number of people who have expertise in certain fields, we asked them to serve and we asked that report be brought back to us by 2004. It makes a lot of sense to stay with the original piece of legislation and defeat this amendment. Thank you Mr. President.

SENATOR CLEGG: Thank you Mr. President. I rise in support of the amendment and I applaud Senator O'Hearn for seeing that efficiency in government isn't dead. We found a commission that could do the work, well a committee that could do the work, and instead of bringing about a new commission, and commissions cost us money, we have given the task to something that already exists. I have great faith knowing who the members are, and I believe that they will contact everyone who is going to be on the other commission, to participate. I think that we will achieve our goals in a more efficient manner. Again, I applaud Senator O'Hearn for seeing that there is maybe a small amount of money, some savings. Thank you.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator D'Allesandro.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**The following Senators voted No: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 17 - Nays: 6**

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 179**, establishing a committee to study enhancement of laws relating to vehicle pursuits. Transportation Committee. Ought to pass with amendment, Vote 4-0. Senator Flanders for the committee.

**Senate Transportation**

**April 9, 2003**

**2003-1241s**

**03/10**

**Amendment to HB 179**

Amend the bill by replacing section 2 with the following:

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Five members of the house, appointed by the speaker of the house of representatives.

(b) One member of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

Amend the bill by replacing section 6 with the following:

6 Effective Date. This act shall take effect upon its passage.

SENATOR FLANDERS: Thank you Mr. President. I move HB 179 ought to pass with amendment. This bill establishes a study committee to review the laws relating to vehicle pursuits. The Transportation Committee's amendment simply changes the number of Senate members appointed to the committee from three to one and increases the House membership from three to five. I move HB 179 ought to pass as amended.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. This is not a bill to see how fast we can go to do a pursuit by the Police Department. What has happened on the border towns is a real problem that has come about wherein cars are getting back across the border and the New Hampshire Police, in Plaistow especially, they have found that...they testified on this, cannot go over state lines. In fact, there is a parking lot at the mall where if you get into a pursuit on one end of the parking lot, you go over the state line. You can stay in the same parking lot and the police can't do anything about it. Based upon talking to the Department of Safety, and hate to just say "study committee", because everybody knows what that means. But we do feel that a study committee should indeed be set up to look at this to see if there are some laws that need to be changed in the motor vehicle laws that would help these border towns. The Transportation Committee amendment simply changes the number of Senate members appointed to the committee from three to one and increase the House members from three to five. We ask that you support the ought to pass as amended. Thank you.

SENATOR D'ALLESANDRO: Thank you Mr. President. Senator Flanders, can't we send this to some standing committee and save money? I mean,



we want to save money? We must have a committee of safety that has been established that we can send this to, thus elevating the membership from another tedious and heart wrenching situation in terms of study?

SENATOR FLANDERS: I don't think that it deserves an answer, thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 327**, establishing a committee to study the use of state vehicles. Transportation Committee. Inexpedient to legislate, Vote 3-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you Mr. President. I move HB 327 inexpedient to legislate. This bill would establish a committee to study the use of state vehicles. The Transportation Committee recommends a vote of ITL in order to give the study committee assigned to review the operating efficiency of state government a chance to work before we establish another efficiency study. If the state vehicle issue is not dealt with sufficiently we can take another look at it again next session. I move HB 327 inexpedient to legislate and ask for your support. Thank you.

SENATOR BOYCE: I would like to speak against the committee on this. Partially because of the comment that was made, if we inexpedient to legislate this today, it cannot come back next year as the same idea, even if the efficiency committee, commission, deals with it. So rather than have that situation come up, what I would like to do is to ask someone to table this bill so that we can have it as a viable option next year, rather than simply kill it, which means that it cannot be brought back up by either the House or Senate next year. So if someone would be so kind as to make that motion, since I rose to speak, I would appreciate it.

SENATOR BARNES: Senator Boyce, if we table this, that doesn't automatically bring it back next year, that means that it will have to come off of the table sometime.

SENATOR BOYCE: My understanding is that if it is on the table and it has not been acted on as inexpedient to legislate, then it can be re-introduced next year, the same subject can be dealt with in a bill next year; however, if we inexpedient to legislate it, it cannot be brought back next year.

SENATOR BARNES: Thank you.

### **MOTION TO TABLE**

Senator Sapareto moved to have **HB 327** laid on the table.

**Adopted.**

### **LAID ON THE TABLE**

**HB 327**, establishing a committee to study the use of state vehicles.

**HB 769**, relative to the lighting of certain advertising devices along highways. Transportation Committee. Inexpedient to legislate, Vote 4-0. Senator Morse for the committee.

SENATOR MORSE: Thank you Mr. President. I move HB 769 inexpedient to legislate. This bill would prohibit the use of lighting that glares upward on certain highway signs beginning in 2006 and would require that by 2017, all lighting on these signs be full cut off lighting. House

Bill 769 has good intentions, as it attempts to address concerns of light pollution; however, the bill's original intent was altered and if it passed in its present form, would cause unintentional problems for a number of businesses and advertisers that have illuminated their signs. I move HB 769 inexpedient to legislate. Thank you.

SENATOR LARSEN: While I recognize that HB 769 was perhaps not drafted in the original intent, I want to applaud the original intent of the bill that was co-sponsored by Senators Roberge and Martel. The issue of light pollution is one which I believe this state needs to begin to address. I did in fact, chair a committee on light pollution not too long ago. We set up some state standards for communities that wished to reduce light pollution in their communities and it is time that the state starts to look at what we can do. All of us appreciate, and I am not an astronomer, but all of us appreciate the simple pleasures of looking up at the night sky and being able to see the stars. If you look at satellite projection of this country, you will see in the night sky, the pictures show that the entire United States east coast is lit from Florida all the way up to about New Hampshire. We have an opportunity to protect what is special about our state, and I hope in the future to bring in a bill which will in fact, address the state's own lighting and highway lights, and encourage communities to do the same on a voluntary basis. So I just rise to highlight this as an important issue and perhaps in the next session we can get it right. Thanks.

**Committee report of inexpedient to legislate is adopted.**

**HB 181**, relative to limiting landowner liability for giving permission for horseback riding. Wildlife and Recreation Committee. Ought to pass, Vote 3-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you Mr. President. I move HB 181 ought to pass. This bill amends RSA 212:34 by adding "horseback riding" to a list of recreational activities in which a landowner's liability for personal injury or property damage is limited by extending duty of care to the horseback rider. Other activities that are currently allowed by statute are: hunting, fishing, trapping, camping, water sports, winter sports of OHRV use, hiking, sightseeing, removal of firewood, and activities to protect public well-being. While the bill significantly limits a landowner's liability, it still holds them responsible for accidents that are found to have been willfully and maliciously planned or if the owner owed a duty to keep the premises safe. We urge HB 181 ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 387-FN**, allowing free admission to the state park system for certain members of the New Hampshire national guard. Wildlife and Recreation Committee. Ought to pass with amendment, Vote 5-0. Senator Sapareto for the committee.

**Wildlife and Recreation**

**April 9, 2003**

**2003-1224s**

**04/10**

**Amendment to HB 387-FN**

Amend the title of the bill by replacing it with the following:

AN ACT allowing free day-use admission to the state park system for certain members of the New Hampshire national guard.

Amend the bill by replacing section 1 with the following:

1 New Paragraph; Fees for Park System; Free Day-Use Admission for Certain Active Members of the New Hampshire National Guard. Amend RSA 216-A:3-g by inserting after paragraph III the following new paragraph:

IV.(a) Any active member of a federally recognized unit of the New Hampshire national guard who is a legal resident of this state, and who meets the minimum requirements for satisfactory membership, as defined in the United States Department of the Army and the United States Department of the Air Force regulations, and is serving in pay grades E1 through E6 shall not be charged a fee for day-use admission to the state park system. This section shall apply to members of the Active Guard and Reserve program in the New Hampshire national guard.

(b) Any fees for the use of enterprise activities as described in paragraph II of this section shall be charged.

**2003-1224s**

#### AMENDED ANALYSIS

This bill provides that certain active members of the New Hampshire national guard, including members of the Active Guard and Reserve program, who are legal residents of this state, shall not be charged a fee for day-use admission to the state park system.

SENATOR SAPARETO: Thank you Mr. President. I move HB 387 ought to pass with amendment. This bill allows National Guard members of the Active Guard and Reserve Program that are residents of New Hampshire, to enter the state park system free of charge during day-use hours. The sponsors feel that this is a small way to say thank you to our guardsmen and women for their hard work and dedication. The Department of Resources and Economic Development is proud to support the New Hampshire National Guard and is willing to accept the loss of revenue to the State Park Fund. The Wildlife Committee recommends HB 387 ought to pass as amended. I would like to add that the amendment that we have added here simply... we wanted to make sure that it had "day-use". Again, it is for New Hampshire residents. Thank you.

SENATOR KENNEY: Senator Sapareto, was there any discussion in regard to retirees that are E-6 in regard to this entitlement? My second question was what would identify a New Hampshire resident as far as what type of identification they would have to show to identify themselves as a New Hampshire resident, given the fact that probably some of the guardsmen live outside the state? Lastly, was there any consideration for other reservists who are E-1 to E-6 out of the states system who serve in the state of New Hampshire but from a federal standpoint?

SENATOR SAPARETO: Thank you Senator. Actually, your first question, was because of the lower E grades are earning less money, so maybe we would like to make it a little easier for them because they were the ones that could least afford it. That is why that was done. The second part of your question regarding the credentials would be referred to, determined by the Department of Resources and Economic Development to ensure that these people are actually eligible. The discussion was not brought up in committee as to what would constitute identification for those requirements. DRED was going to work that out. I think that there is a third part to your question?

SENATOR KENNEY: Reserves.

SENATOR SAPARETO: The reservists again. That was left up to DRED as well.

SENATOR BARNES: Senator Kenney, would you believe that I think that your question on the reservists is a good one? Would you believe that I would like to have this tabled so that perhaps you can bring a floor amendment in to cover the reservists?

SENATOR KENNEY: Senator Barnes, anything that you say, I believe.

SENATOR BARNES: Oh gee. Go Red Sox. Thank you for the tip-off. If it is going to Finance, Mr. President, I am sure that the Finance Committee will take good care of the amendment that Senator Kenney will bring in. Thank you very much.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 485**, relative to the membership on the invasive species committee. Wildlife and Recreation Committee. Ought to pass, Vote 4-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you Mr. President. I move HB 485 ought to pass. This bill will increase the membership of the Invasive Species Committee from nine to eleven. The director of the University of New Hampshire Cooperative Division or designee and an individual, appointed by the Governor, representing the interests of livestock owners and feed growers. These will be the new members. The sponsors hope that the additional members will bring added expertise and knowledge to the table as we continue to study the in-state invasive species issue. Thank you.

SENATOR BARNES: Senator Roberge, is this bill going to help get rid of the Japanese Beetles on my rose bushes?

SENATOR ROBERGE: I don't know Senator.

SENATOR BARNES: They are certainly invasive foreign insects.

SENATOR ROBERGE: You will have to ask the committee.

SENATOR BARNES: You don't know if that will help?

SENATOR ROBERGE: No.

**Adopted.**

**Ordered to third reading.**

**HB 703-FN**, permitting free admission to the state park system for disabled veterans. Wildlife and Recreation Committee. Ought to pass with amendment, Vote 5-0. Senator Sapareto for the committee.

**Wildlife and Recreation**

**April 9, 2003**

**2003-1223s**

**04/10**

#### **Amendment to HB 703-FN**

Amend the title of the bill by replacing it with the following:

AN ACT permitting free day-use admission to the state park system for disabled veterans.

Amend the bill by replacing section 1 with the following:

1 New Paragraph; Fees for Park System; Free Day-Use Admission for Disabled Veterans. Amend RSA 216-A:3-g by inserting after paragraph III the following new paragraph:

IV. No disabled veteran of this state, upon providing satisfactory proof of a service-connected disability, shall be charged a fee for day-use admission to the state park system. Special number plates issued to disabled veterans pursuant to RSA 261:86 or a letter issued by the United States Department of Veterans Affairs certifying that the veteran suffers from a service-connected disability shall constitute satisfactory proof under this section. Any fees for the use of enterprise activities as defined in paragraph II shall be charged.

**2003-1223s**

#### AMENDED ANALYSIS

This bill exempts disabled veterans, upon satisfactory proof of a service-connected disability, from the payment of day-use admission fees to the state park system.

SENATOR SAPARETO: Thank you Mr. President. I move HB 703 ought to pass with amendment. This bill allows disabled veterans that are residents of New Hampshire, to enter a state-owned recreation area free of charge during the day-use hours. The only requirement is that the veteran will be asked to provide satisfactory proof of their service-connected disability. Similar to HB 387, the Department of Resources and Economic Development supports this bill and New Hampshire's disabled veterans and is willing to accept the loss of revenue to the State Park Fund. The Wildlife Committee recommends HB 703 ought to pass as amended. Thank you.

SENATOR BARNES: Thank you Mr. President. I realize that this bill is going over to Finance, and I just wanted to point out the fact that this bill is only for New Hampshire veterans. The House amended it and they did it the right way, so if the Finance Committee would look on the fiscal note that they have on this bill that is in front of us, you will notice that there is \$22,482 that was put on there for visitors from Massachusetts. You can cross that off Finance Committee, because the Massachusetts veterans, they are not welcome to be free.

SENATOR BOYCE: Senator Sapareto, in reading this it shows that the special number plates can be used as the identification. The veterans plate on the car would be used as identification of the veteran being eligible for this. My question is, what if it is grandpa's car and the kid just borrowed it for the purpose of getting into the park for free? When this gets to Finance, would it be okay if we somehow figured out a way to say that the veteran should be in the car and not just the plate?

SENATOR SAPARETO: Thank you Senator. Actually, some of the concerns that I had with the bill where the same thing. Identifying who is eligible and who is not. It is my understanding in asking the representatives from DRED, that these issues would be taken care of from them, but I have no problem having them placed in statute or down at the Finance Committee level.

SENATOR BOYCE: Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in its amendments to the following entitled Bills sent down from the Senate:

**HB 64**, establishing a commission to study the creation of an integrated criminal justice information system and any issues related to the privacy, security, and dissemination of such criminal justice information.

**HB 104-FN**, implementing procedures for a hospital or safe haven to assume temporary care and control of an abandoned child and creating an exception to the crime of endangering the welfare of a child.

**HB 502**, establishing a committee to study options for reducing the impact of exhaust emissions from diesel engines in New Hampshire.

### **RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be by this resolution read a third time and all titles be same as adopted, and that they be passed at the present time

**Adopted.**

### **LATE SESSION**

#### **Third Reading and Final Passage**

**HB 120**, relative to sessions for the correction of the checklist and sessions for changes of party registration.

**HB 179**, establishing a committee to study enhancement of laws relating to vehicle pursuits.

**HB 181**, relative to limiting landowner liability for giving permission for horseback riding.

**HB 182**, relative to unclaimed shares and advancements to heirs.

**HB 183**, relative to a distribution from a decedent's estate to a minor.

**HB 186**, relative to the effect of divorce or annulment upon trusts.

**HB 358-FN-L**, relative to recount fees in local elections.

**HB 436**, relative to the acquisition of Connecticut Valley Electric Company and electric utility restructuring.

**HB 485**, relative to the membership on the invasive species committee.

**HB 732**, relative to fines for forestry law violations, and deceptive forestry business practices.

**HB 831**, establishing a New Hampshire end-of-life care study commission.

### **ANNOUNCEMENTS**

**SENATOR D'ALLESANDRO (RULE #44):** Mr. President, last week we passed SB 14 as amended. The reason for the immediacy was an amendment so that the Belknap County Recreation Area could solicit, receive, hold and expand any gifts or grants. We made that bill effective upon passage. That bill concerned how a county commissioner is chosen when a vacancy occurs. Now I asked a question at the end of that session that

said, does the ex post facto law apply when a process is in place prior to a piece of legislation? Wherein the county had already started a process by which the vacancy occurred because of the death of Ernest Barker, was in the process of being filled. I don't think that I really got a good answer to that. What has resulted is this: The process that was in place, and had been ongoing, was immediately negated and the chief Justice of the Superior Court said that it is now in the hands of the legislative delegation as to who the successor would be in the passing of the commissioner. We had a process that was in place. Now whether we wanted to change it or not is again, the will of the body. But it just seems to me that without knowing exactly what the ramifications were in that piece of legislation, we let it pass and we let a process that was in place, be dissolved. Many people or a number of people who had applied for that position did it in good faith under the old system, not realizing that their time, their efforts, and the efforts of the judges etceteras, would be immediately negated by this piece of legislation. I don't think that is good business. I just don't think that it is a good thing to do. I really take full responsibility myself because if I didn't have the answer to my question clearly and succinctly stated when I voiced that, then I should have done more to prevent that legislation from passing without knowing the answer to that question, because that question had a dramatic affect on the process. I know that we do a lot of things here, we work very hard and everyone certainly deserves kudos for that, but I think that in this particular situation, you know, something happened, that I don't think was the will of the body. Now I haven't taken an opinion survey of the members in the body, but it appears to me from conversations, that the intent of the Senate was not to negate a process that was in place. I don't think that was the intent of this body. I hope that isn't the intent of this body. But what has happened is as of a result of this piece of legislation, that is exactly what happened and I find that just a very, very difficult thing to accept. We are here to do good things. We all have our opinions on these items and we express those opinions, but I don't think that given those circumstances, what we wanted to do was to eliminate a process that was ongoing. Thank you Mr. President.

SENATOR LARSEN (RULE #44): I, too, rise with concern for yesterday's Fiscal Committee meeting which reduced and caused a \$19 million reduction for state agencies to continue to the end of the year. We were advised that yesterday's Fiscal Committee meeting would in fact not have controversial measures considered. While I recognize that perhaps some other members were not aware that it was coming up, it was in fact a momentous decision by Fiscal Committee yesterday to approve reductions at \$19 million. I have had some conversations with our Senate Finance Chair and I think that with several other members, share a great concern for the effect that this Fiscal Committee action yesterday will cause on state operations till the end of the year. I hope that in the future if members are aware that we are going to have a discussion on dramatic changes such as this, that all members are notified and able to be present for the discussion. Thank you.

SENATOR PETERSON (RULE #44): I rise to express my sorrow for the passing this week of Maurice Rapf, Professor Emeritus at Dartmouth College, who I knew as a friend and a mentor and believed to be a person who contributed greatly to the life of our state. Professor Maurice Rapf really was in on the creation of the Film Department in Hanover in its infancy. I am sure that Senator Below remembers his efforts as

well. I was privileged to, as a freshman there at Dartmouth, to work with others to produce a short documentary on the death of the railroads at White River Junction, which now is shown in a museum, which is in the old rail yard there, which has been developed there recently. Professor Rapf was a screen writer who wrote such classics as Disney's Cinderella, his family was deep in the film business. His father was one of the original founders of MGM and his brother Mathew Rapf a famous film director as well. His obituary appears in today's Union Leader and I rise to express my sadness at his passing and to celebrate in these words, his extraordinary life. Thank you Mr. President.

### **RESOLUTION**

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, processing Enrolled Bill Reports and Amendments, and receiving House Messages, and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

**In recess to the Call of the Chair.**

**Out of Recess.**

### **SENATE STANDING COMMITTEE UPDATE**

#### **SENATE FINANCE**

Richard P. Green, Chairman

Robert K. Boyce, Vice Chairman

Clifton C. Below

Lou D'Allesandro

Thomas R. Eaton

Theodore L. Gatsas

Bob Odell

Robert E. Clegg, Jr.

**April 22, 2003**

**2003-1345-EBA**

**05/09**

#### **Enrolled Bill Amendment to SB 170**

The Committee on Enrolled Bills to which was referred SB 170

AN ACT relative to Public Service of New Hampshire.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

### **FOR THE COMMITTEE**

#### **Explanation to Enrolled Bill Amendment to SB 170**

This enrolled bill amendment makes technical corrections and inserts a section heading.

#### **Enrolled Bill Amendment to SB 170**

Amend RSA 369-B:3, IV(b)(1)(A) as inserted by section 2 of the bill by replacing line 12 with the following:

***commission;***

Amend section 5 of the bill by replacing line 8 with the following: commission Order No. 23,550, as amended by this act, satisfies all of the conditions and



Amend section 6 of the bill by replacing line 1 with the following:

6 Report by Legislative Oversight Committee on Electric Utility Restructuring. The legislative oversight committee on electric utility restructuring established by

Senator Eaton moved adoption.

**Adopted.**

### **REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

**SB 170**, relative to Public Service of New Hampshire.

Senator Clegg moved adoption.

**Adopted.**

### **HOUSE MESSAGE**

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 671-FN-A**, establishing a contributory defined benefit judicial retirement plan.

**HB 738-FN-A-L**, permitting aid to public water systems to be used for forming or improving regional water systems and making an appropriation therefor.

**HB 751-FN-L**, implementing an alternative school building aid grant formula, establishing size and cost standards for the construction of new school facilities, and permitting high school vocational technical education programs which lease space to be eligible for school building aid grants.

**HB 810-FN-A**, relative to processing excavating and dredging and terrain alteration permits, changing the fees for permits, establishing 2 new positions, and making an appropriation therefor.

### **INTRODUCTION OF HOUSE BILLS**

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **671 - 810** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

### **First and Second Reading and Referral**

**HB 671-FN-A**, establishing a contributory defined benefit judicial retirement plan. (Insurance)

**HB 738-FN-A-L**, permitting aid to public water systems to be used for forming or improving regional water systems and making an appropriation therefor. (Environment)

**HB 751-FN-L**, implementing an alternative school building aid grant formula, establishing size and cost standards for the construction of new school facilities, and permitting high school vocational technical education programs which lease space to be eligible for school building aid grants. (Education)

**HB 810-FN-A**, relative to processing excavating and dredging and terrain alteration permits, changing the fees for permits, establishing 2 new positions, and making an appropriation therefor. (Energy & Economic Development)

### **REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

**HB 64**, establishing a commission to study the creation of an integrated criminal justice information system and any issues related to the privacy, security, and dissemination of such criminal justice information.

**HB 86**, relative to the membership of the permissible fireworks review committee.

**HB 101**, relative to qualifications for state offices and relative to vacancies in public offices.

**HB 263**, establishing an oversight committee to review the allocation of funds disbursed for the developmental disabilities waitlist.

**HB 305**, relative to time allowed for voting.

**HB 321**, relative to ordinary and accidental death benefits in the city of Manchester employees contributory retirement system.

**HB 498**, relative to 20-day vehicle registrations.

**HB 502**, establishing a committee to study options for reducing the impact of exhaust emissions from diesel engines in New Hampshire.

**HB 678**, relative to penalties for operation of OHRVs after suspension of driving privileges for certain motor vehicle offenses.

**HB 833**, relative to Shaker Road and Bay Hill Road in the town of Northfield.

Senator D'Allesandro moved adoption.

**Adopted.**

### **HOUSE MESSAGE**

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 109-FN**, relative to telemarketing practices.

**HB 164-FN-A**, increasing the gross premiums tax on insurance provided by certain unlicensed companies.

**HB 167**, relative to complaints against judges.

**HB 280-FN**, relative to the poison information center.

**HB 304-A**, relative to state acquisition of certain acreage in the Connecticut Lakes headwaters tract and making an appropriation therefor.

**HB 519-FN-A**, relative to the conservation number plate trust fund.

**HB 565-FN-A**, establishing a commission to implement the Hampton Beach Master Plan.

**HB 577-FN-A-L**, relative to implementing the Help America Vote Act of 2002 and relative to rulemaking by the secretary of state.

**HB 578-FN-A**, establishing a program for self-certification by small quantity hazardous waste generators and making an appropriation therefor.

**HB 590-FN**, relative to highway fund budget reporting requirements.

**HB 608-FN-L**, reducing the education property tax rate and relative to the calculation of adequate education grants.

**HB 619-FN-A**, expanding opportunities for dropout prevention and dropout recovery.

**HB 621-FN-A-L**, establishing an early childhood literacy program.

**HB 663-FN-A-L**, relative to county and state funding of long-term care medicaid programs.

**HB 677-FN**, increasing the number of reserved student slots in medical programs, and establishing a loan forgiveness program for physicians who practice in underserved areas, and making an appropriation therefor.

**HB 702-FN**, relative to payment of medical benefits costs for disabled group II members of the retirement system.

**HB 705**, establishing a committee to study the application of the communications services tax to the provision of Internet services and relative to the rate of the communications services tax and the property tax exemption for wooden poles and conduits.

**HB 717-FN-L**, relative to targeted aid to education.

**HB 719-FN-A**, relative to the duties, function, and operation of the Pease development authority.

**HB 724-FN-L**, extending the effective date of the Skyhaven airport transfer plan.

**HB 728-FN-A**, establishing a dedicated fund for organic certification inspections.

**HB 735-FN**, relative to prescription drugs and medicaid best practices.

**HB 737-FN-A**, relative to the state conservation committee and making an appropriation therefor.

## INTRODUCTION OF HOUSE BILLS

Senator Clegg offered the following Resolution:

**RESOLVED**, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **109 - 737** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

## First and Second Reading and Referral

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 109-FN**, relative to telemarketing practices. (Interstate Cooperation)

**HB 164-FN-A**, increasing the gross premiums tax on insurance provided by certain unlicensed companies. (Insurance)

**HB 167**, relative to complaints against judges. (Judiciary)

**HB 280-FN**, relative to the poison information center. (Public Institutions, Health and Human Services)

**HB 304-A**, relative to state acquisition of certain acreage in the Connecticut Lakes headwaters tract and making an appropriation therefor. (Finance)

**HB 519-FN-A**, relative to the conservation number plate trust fund. (Ways and Means)

**HB 565-FN-A**, establishing a commission to implement the Hampton Beach Master Plan. (Energy and Economic Development)

**HB 577-FN-A-L**, relative to implementing the Help America Vote Act of 2002 and relative to rulemaking by the secretary of state. (Internal Affairs)

**HB 578-FN-A**, establishing a program for self-certification by small quantity hazardous waste generators and making an appropriation therefor. (Environment)

**HB 590-FN**, relative to highway fund budget reporting requirements. (Ways and Means)

**HB 608-FN-L**, reducing the education property tax rate and relative to the calculation of adequate education grants. (Education)

**HB 619-FN-A**, expanding opportunities for dropout prevention and dropout recovery. (Education)

**HB 621-FN-A-L**, establishing an early childhood literacy program. (Education)

**HB 663-FN-A-L**, relative to county and state funding of long-term care medicaid programs. (Public Institutions, Health and Human Services)

**HB 677-FN**, increasing the number of reserved student slots in medical programs, and establishing a loan forgiveness program for physicians who practice in underserved areas, and making an appropriation therefor. (Public Institutions, Health and Human Services)

**HB 702-FN**, relative to payment of medical benefits costs for disabled group II members of the retirement system. (Insurance)

**HB 705**, establishing a committee to study the application of the communications services tax to the provision of Internet services and relative to the rate of the communications services tax and the property tax exemption for wooden poles and conduits. (Energy and Economic Development)

**HB 717-FN-L**, relative to targeted aid to education. (Education)

**HB 719-FN-A**, relative to the duties, function, and operation of the Pease development authority. (Executive Departments and Administration)

**HB 724-FN-L**, extending the effective date of the Skyhaven airport transfer plan. (Transportation)

**HB 728-FN-A**, establishing a dedicated fund for organic certification inspections. (Environment)

**HB 735-FN**, relative to prescription drugs and medicaid best practices. (Public Institutions, Health and Human Services)

**HB 737-FN-A**, relative to the state conservation committee and making an appropriation therefor. (Environment)

### HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 1-A**, making appropriations for the expenses of certain departments of the state for fiscal years ending June 30, 2004, and June 30, 2005.

**HB 2-FN-A**, relative to state fees, funds, revenues, and expenditures.

## INTRODUCTION OF HOUSE BILLS

Senator Clegg offered the following Resolution:

**RESOLVED**, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **1-2** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 1-A**, making appropriations for the expenses of certain departments of the state for fiscal years ending June 30, 2004, and June 30, 2005. (Finance)

**HB 2-FN-A**, relative to state fees, funds, revenues, and expenditures. (Finance)

## HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bills sent down from the Senate:

**SB 22**, amending the duties of the public higher education study committee.

**SB 24**, relative to license revocations for DWI offenders under the age of 21.

**SB 26**, removing the penalty against teachers who fail to keep registers.

**SB 51-FN**, relative to membership on the New England Board of Higher Education.

**SB 68**, authorizing electronic certification of educational credentials.

**SB 170**, relative to Public Service of New Hampshire.

**SCR 3**, urging maintenance of funding for the Low Income Home Energy Assistance Program.

## HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled Bills sent down from the Senate:

**HB 151**, authorizing the county convention to contract and fund performance audits of county departments, authorizing employees of the Hillsborough and Rockingham county delegations, and relative to adoption of revisions and the budget process in city charters.

**HB 732-FN**, relative to fines for forestry law violations, and deceptive forestry business practices.

**April 17, 2003**  
**2003-1330-EBA**  
**03/01**

### Enrolled Bill Amendment to HB 104-FN

The Committee on Enrolled Bills to which was referred HB 104-FN

**AN ACT** implementing procedures for a hospital or safe haven to assume temporary care and control of an abandoned child and creating an exception to the crime of endangering the welfare of a child.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

### FOR THE COMMITTEE

#### **Explanation to Enrolled Bill Amendment to HB 104-FN**

This enrolled bill amendment makes a typographical correction.

#### **Enrolled Bill Amendment to HB 104-FN**

Amend RSA 132-A:1 as inserted by section 1 of the bill by replacing line 1 with the following:

132-A:1 Definitions. In this chapter:

Senator Eaton moved adoption.

**Adopted.**

### LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*April 24, 2003*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good Morning! So now not only do there need to be regular prayers sent up for the Senate as a whole, but we need to add in some heavy-duty, extra strength petitions for the Senate Finance Committee as they, and then before long, all of you together, carefully walk that tightrope which seems to be stretched over a turbulent, raging, kind of economic Niagara Falls. Keep your balance, keep your courage, keep your eye fixed on the other side and as you gingerly teeter along, never forget that a budget is not so much a frugal spending plan as it is your statement, your creed, written in numbers, that reveals your baseline moral convictions about the value of people. Nothing more, nothing less. Let us pray:

*Lord of all wisdom, whose knowledge surpasses that of even Alan Greenspan, endow with Your perception and Your priorities these good men and women as they make choices on our behalf concerning the resources we need in order to effectively protect and promote the dignity of every human being in this state and beyond.* Amen.

Senator Gatsas led the Pledge of Allegiance.

### INTRODUCTION OF GUESTS

#### **COMMITTEE REPORTS**

**HB 132**, relative to state scholarships for orphans of veterans. Education Committee. Ought to pass, Vote 5-0. Senator Green for the committee.

**SENATOR GREEN:** Thank you Mr. President. I move that HB 132 ought to pass. This legislation makes minor technical changes but has large ramifications. This legislation corrects official dates of the Korean and Vietnam wars. It also includes the Persian Gulf War, which has no ending date, for the purpose of awarding scholarships to orphans of veterans. This legislation now includes certain military actions and interven-

tions, which was previously not included. Given the current status of military action, this legislation is both timely and appropriate. The Education Committee unanimously voted ought to pass in support of this legislation and we ask you to support it also. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 616-FN-L**, relative to the Hampton real estate trust fund. Energy and Economic Development Committee. Ought to pass, Vote 4-0. Senator Prescott for the committee.

SENATOR PRESCOTT: Thank you Mr. President. I move that HB 616 ought to pass as was recommended by the Senate Energy and Economic Development Committee. This bill is especially important to me, for Senator Preston, almost by namesake, set up this real estate trust fund for the purpose of conducting capital improvement projects. A number of years ago, this trust fund was established through state law in order to assist the development of Hampton Beach. When I ran for Senate in the town of Seabrook, I received a note from Senator Preston saying that all of his friends voted for me, almost like he was running in Seabrook as a past Senator. He sat in this seat or the seat next to me. All of his friends thought that I was Senator Preston, because my name is Prescott, and they all wrote him a letter saying "glad to vote for you again Senator Preston." So I think that I owe a lot to Senator Preston. Now that Hampton no longer has any need to continue the real estate development of Hampton Beach, it would be beneficial if the town were allowed to make loans against this trust fund. Since the trust fund was established under state law, it is necessary for us to use state law to amend its use. The committee fully supports this bill, and as Hampton's Senator, although I am not Hampton's Senator, I ask the full Senate to also lend its support. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 598-FN-A**, relative to the agriculture nutrient management program and making an appropriation therefor. Environment Committee. Ought to pass with amendment, Vote 3-0. Senator Barnes for the committee.

**Environment**  
**April 17, 2003**  
**2003-1326s**  
**08/10**

#### **Amendment to HB 598-FN-A**

Amend the bill by replacing section 1 with the following:

##### **1 Appropriations.**

I. The sum of \$40,000 is appropriated to the department of agriculture, markets, and food for each year of the biennium ending June 30, 2005, for the purpose of funding the agricultural nutrient management program established under RSA 431:36. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

II The commissioner shall apply for a grant of \$30,000 through the department of environmental services from the Environmental Protection Agency pursuant to section 319 of the Clean Water Act for nonpoint source pollution programs.

SENATOR BARNES: Thank you Mr. President. Before I read this blurb, I have just read it for the first time, and I see now why Senator Johnson must have seen it before I did and he asked me to bring this bill out, and after reading this, I can see why, and I think that you will too after you hear the blurb. Thank you Mr. President, I move that HB 598 ought to pass with amendment, as was recommended by the Senate Environment Committee. For those Senators who are not familiar with the history of the Agricultural nutrient management Program, it basically pertains to the application and management of cow manure. In recent years, there has been a concern with cow manure run-off into local groundwater sources, resulting in water pollution that can seep into our drinking water. Many of us think that a cow standing in a river can be a pretty scene, but it can actually be very harmful to our health. Keep the cows out of the rivers. There is a program in place to combat the harmful spread of cow manure. Thank you Carl for letting me have this. This program provides grants to local farmers, allowing them to build fences that will keep cattle a safe distance from surface water. This bill allows for additional funding of the program, providing \$40,000 per year for additional grants through 2005. The program will also help fund itself, by raising the fertilizer fee from \$50 to \$75. The committee feels that this bill will effectively, now get this...effectively combat bad cow manure. We recommend that this bill ought to pass with amendment. Thank you for your support.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 676-FN**, relative to lake level investigations. Environment Committee. Ought to pass, Vote 4-0. Senator Johnson for the committee.

### **MOTION TO TABLE**

Senator Johnson moved to have **HB 676-FN** laid on the table.

**Adopted.**

### **LAIID ON THE TABLE**

**HB 676-FN**, relative to lake level investigations.

**HB 59**, relative to court reporting. Judiciary Committee. Ought to pass, Vote 4-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you Mr. President. I move HB 59 ought to pass. House Bill 59 regulates certified court reporters and was requested as a result of a compromise reached during a study committee. While the various parties involved in this matter began at opposing ends, they came together and worked out the terms contained in this bill. The Judiciary Committee recommends ought to pass and asks for your support. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 77**, establishing a committee to study the process of de novo appeals from the district courts. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Clegg for the committee.



**Senate Judiciary**  
**April 15, 2003**  
**2003-1288s**  
**09/01**

**Amendment to HB 77**

Amend paragraph I of section 2 of the bill by replacing it with the following:

I. The members of the committee shall be 5 members of the house of representatives, appointed by the speaker of the house.

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

SENATOR CLEGG: Thank you Mr. President. I move HB 77 ought to pass with amendment. The bill establishes a study committee to look at the entire issue of de novo appeals from the district courts. The amendment deletes members of the Senate and allows the House to study the issue with five of their members. The Judiciary Committee recommends ought to pass with amendment and hopes that you will support us. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 184**, relative to distribution upon intestacy. Judiciary Committee. Ought to pass, Vote 4-0. Senator Peterson for the committee.

SENATOR PETERSON: Thank you Mr. President. I move HB 184 ought to pass. House Bill 184 clarifies the law concerning distribution of assets when someone dies without a will. The legislation was requested by practitioners in the Probate Courts in order to clear up ambiguities in the law. It also changes the amount left to a surviving spouse from \$50,000 to \$250,000 to allow for inflation since the legislation was last modified around 30 years ago. The provisions in HB 184 allow the court to deal with people who have had multiple marriages, stepchildren and the myriad of relationships now seen. Lastly, the legislation clarifies that decedents cannot "take" in an estate beyond the 4th degree, which is cousin of the decedent. Any monies from the estate after the 4th degree would go to the state. The Judiciary Committee supports this legislation and recommends that it be adopted. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 185**, relative to pretermitted heirs. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Peterson for the committee.

**Senate Judiciary**

**April 17, 2003**

**2003-1327s**

**01/09**

**Amendment to HB 185**

Amend the bill by replacing all after the enacting clause with the following:

1 Wills; Child Not Named. RSA 551:10 is repealed and reenacted to read as follows:

551:10 Child Not Named. If any person shall die testate leaving a child born or adopted, and such child is not provided for or referred to therein, such pretermitted child or such child's issue if such child has predeceased the testator shall, unless it appears to the probate court that the omission was intentional and not occasioned by accident or mistake, take that portion of the testator's estate to which such child or such child's issue would have been entitled if the testator had died intestate; provided, however, that if such last will or any codicil thereto provides for another child of the testator or the issue of another child of the testator who has predeceased the testator, the pretermitted child shall take that portion of the testator's estate equal to the greater of (a) the largest sum of all bequests and devises to any one child of the testator named in such last will and any codicil thereto, or (b) the sum of all bequests and devises to all of the issue of another child of the testator who predeceased the testator. The issue of a pretermitted child who predeceased the testator shall take that portion of the testator's estate equal to the lesser of (a) the largest sum of all bequests and devises to any one child of the testator named in such last will and any codicil thereto, or (b) the sum of all bequests and devises to all of the issue of another child of the testator who predeceased the testator. The portion of the testator's estate, if any, that the issue of a pretermitted child who predeceased the testator take shall be disbursed equally if the issue are all of the same degree of kinship to the testator, but if of unequal degree those of more remote degree take by representation.

2 Wills; Share of Unnamed Child. RSA 551:11 is repealed and reenacted to read as follows:

551:11 Share of Unnamed Child. If the property bequeathed or devised by the testator shall be insufficient to satisfy the share of such pretermitted child or the share of the issue of such child if such child predeceased the testator after allowing for advancements to such child or such child's issue if such child predeceased the testator, the same shall be made up from the testate estate in such equitable manner as the probate court shall deem appropriate.

3 Effective Date. This act shall take effect January 1, 2004.

SENATOR PETERSON: Thank you Mr. President. In the absence of Senator Foster who is across the street at a House hearing, I move on behalf of the Judiciary Committee HB 185 ought to pass with amendment. House Bill 185 clarifies the law relative to pretermitted heirs, or those who have been left out of a will. The legislation caps the amount that an unnamed child could inherit at the same amount given to other children who are named in a will. Further, the legislation clarifies that if there are not sufficient assets in the estate to satisfy the provisions of the will, then the court has to use equitable judgement to make up the portion of the shares. The committee amendment removed a controversial portion of the bill that would have "turned upside-down" the way wills are currently written. The Judiciary Committee asks your support for HB 185 as amended. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 212**, defining "terrorize" for the purpose of criminal threatening. Judiciary Committee. Ought to pass with amendment, Vote 4-1. Senator Sapareto for the committee.

**Senate Judiciary**  
**April 17, 2003**  
**2003-1329s**  
**04/10**

**Amendment to HB 212**

Amend RSA 631:4, III(b) as inserted by section 1 of the bill by replacing it with the following:

*(b) As used in this section, "terrorize" means to cause alarm, fright, or dread; the state of mind induced by the apprehension of hurt from some hostile or threatening event or manifestation.*

SENATOR SAPARETO: Thank you Mr. President. I move HB 212 ought to pass with amendment. House Bill 212 defines "terrorize" for the purpose of criminal threatening only with the context of the domestic violence statute. A recent Supreme Court ruling issued a rather extreme definition of "terrorize" that many felt was too narrow. House Bill 212 proposes a more reasonable definition. The Judiciary Committee recommends HB 212 be adopted with amendment by unanimous vote.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 278**, relative to certain acts of sexual assault. Judiciary Committee. Ought to pass, Vote 4-0. Senator Peterson for the committee.

SENATOR PETERSON: Thank you Mr. President. Again, I convey Senator Fosters words in his absence, and move HB 278 ought to pass. House Bill 278 deals with teenagers between the ages of 13 and 16, being involved in a sexual relationship when the age difference between the actor and the victim is four years or less. Because one cannot legally give consent until the age of 16 in New Hampshire, if the act is reported, the older teen would be guilty under the current law, of a Class B felony. If convicted, would have to register as a sex offender for the rest of his life. The provisions of HB 278 would allow any acts that would constitute aggravated felonious sexual assault that the perpetrator be charged with a Class A misdemeanor rather than a Class B felony. While there are not many teens currently serving in New Hampshire's prisons because of this, the adoption would have a net positive financial effect on the general fund. The Judiciary Committee recommends HB 278 for adoption and asks for the full Senates support. Thank you.

**Recess.**

**Out of recess.**

**MOTION TO TABLE**

Senator Peterson moved to have **HB 278** laid on the table.

**Adopted.**

**LAIID ON THE TABLE**

**HB 278**, relative to certain acts of sexual assault.

**HB 418**, relative to annulment of arrest records for defendants whose cases result in acquittal, dismissal, or failure to prosecute. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

**Senate Judiciary**  
**April 17, 2003**  
**2003-1328s**  
**09/01**

**Amendment to HB 418**

Amend the title of the bill by replacing it with the following:

AN ACT relative to annulment of criminal records.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4, respectively:

3 Annulment of Criminal Records; Misdemeanor Sentences Including Conditional or Unconditional Discharges. Amend RSA 651:5, III(b) and (c) to read as follows:

(b) For a class B misdemeanor except as provided in subparagraph (f), 3 years *unless the sentence includes a conditional or unconditional discharge, in which case the period shall be one year.*

(c) For a class A misdemeanor except as provided in subparagraph (f), 3 years *unless the sentence includes a conditional or unconditional discharge, in which case the period shall be one year.*

**2003-1328s**

**AMENDED ANALYSIS**

This bill permits a defendant whose case resulted in acquittal, dismissal or failure to prosecute to make a post-trial motion for annulment of the arrest record. The bill removes the requirement that a \$100 fee be charged to a defendant who petitions for annulment of an arrest record.

The bill also permits annulments after one year of criminal records for certain misdemeanor sentences including conditional or unconditional discharge.

SENATOR CLEGG: Thank you Mr. President. I move that HB 418 ought to pass with amendment. The bill permits a defendant whose case resulted in acquittal, dismissal or failure to prosecute to make a post-trial motion for annulment of the record. The issue is, if someone has been found innocent, why do they have to return to court in order to have their record removed? If an annulment is granted, then there should be no record and should be automatically expunged. The committee amendment clarifies two statutes on conditional or unconditional discharges that conflict with each other. The Judiciary Committee recommends HB 418 for adoption with amendment. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 57**, relative to the use of inhalers by pupils and campers with asthma. Public Institutions, Health and Human Services Committee. Ought to pass, Vote 2-0. Senator O'Hearn for the committee.

SENATOR O'HEARN: Thank you Mr. President. I move ought to pass on HB 57. New Hampshire schools and camps generally require that a student's inhaler be stored in a specific place, usually the nurse's office. Although the policy was intended to protect students health and safety, the inhaler is often so far away that students have died before they can

reach the medicine, including the tragic example of the boy who died at a summer camp in New Hampshire this past summer. House Bill 57 allows pupils and campers to carry and self-administer an asthma inhaler as long as their doctor and parent sign a consent form. House Bill 57 puts the young person's life back into the hands of the physician and ultimately the child. The bill also protects schools and camps from civil action. The committee recommends ought to pass. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 92**, relative to the use of epinephrine auto-injectors by pupils and campers with severe allergies. Public Institutions, Health and Human Services Committee. Ought to pass, Vote 2-0. Senator O'Hearn for the committee.

SENATOR O'HEARN: Thank you Mr. President. I move ought to pass on HB 92. An epinephrine auto-injector is used to treat anaphylaxis which, if not treated within minutes or seconds, can put the victim at mortal risk. Under current rules, the auto injector must be dropped off by students and campers at the school or camp's nurse's station. In spite of preventive measures, accidental food ingestion and insect bites can occur around schools or on campgrounds. Because the first few minutes of an attack are crucial, the immediate treatment can be lifesaving. House Bill 92, like HB 57, would allow these students whose physician and parents fill out the appropriate paperwork to possess and self-administer epinephrine as instructed by their physician. If a physician prescribes that an auto-injector should be carried on their person, that protocol should be carried through without interference. The committee recommends ought to pass. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 379**, relative to penalties for OHRV violations by underage operators. Transportation Committee. Ought to pass with amendment, Vote 4-0. Senator Flanders for the committee.

**Senate Transportation**

**April 10, 2003**

**2003-1256s**

**10/03**

#### **Amendment to HB 379**

Amend RSA 215-A:19, IV(b) as inserted by section 2 of the bill by replacing it with the following:

***(b) Notwithstanding RSA 169-B and RSA 169-D, any minor who violates a provision of this chapter shall not be considered a delinquent or a child in need of services. Any minor who violates a provision of this chapter shall be guilty of a violation and may be punished by a fine for each offense, may have his or her OHRV safety training certification suspended for up to 6 months, and may be required to complete community service or to complete additional OHRV safety training.***

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. I move to recommit HB 379. After our executive session, Captain Acerno of the Department of Fish and Game recently pointed out

to us that there was a conflict between the penalties and fees in HB 379, and another HB 748. The Transportation Committee would like more time to address these issues and make the appropriate corrections to clarify both bills. Thank you.

**Senator Flanders moved to recommit.**

**Adopted.**

**HB 379 is recommitted to committee.**

**HB 434-L**, relative to junkyards and motor vehicle recycling yards. Transportation Committee. Ought to pass with amendment, Vote 4-0. Senator Kenney for the committee.

**Senate Transportation**

**April 17, 2003**

**2003-1320s**

**08/03**

**Amendment to HB 434-LOCAL**

Amend RSA 236:128, III as inserted by section 2 of the bill by replacing it with the following:

III. The local governing body or other enforcement official of the town, city, or unincorporated place, after providing notice, may impose a civil penalty of up to \$50 for each day upon any person whose land is deemed a nuisance pursuant to RSA 236:119 until such time as the nuisance is removed or abated to the satisfaction of the governing body, or until the owner of the land acquires a license and is in compliance with the provisions of this subdivision. The building inspector or other local official with the authority to enforce the provisions of this section may commence an action to collect the civil penalty in the district court. Imposition of a civil penalty under this paragraph shall not relieve the owner of any requirement to comply with the provisions of this subdivision, nor shall it preclude the imposition of further actions or remedies under this chapter. The proceeds from the assessment of civil penalties under this section shall be for the use of the town, city, or unincorporated place. This paragraph shall not apply to automotive recycling yards and junkyards properly licensed or pending license renewal under this subdivision.

SENATOR KENNEY: Thank you Mr. President. I move HB 434 ought to pass with amendment. This bill will allow municipalities to place a \$50 fine for each day that the property owner is determined to be out of compliance with the junkyard licensing laws. The current process is lengthy and frequently ends up with the town taking the property owner to court. The proceeds from the assessments of the civil penalties would stay with the town, city or unincorporated place. In addition, the bill will exempt automotive recycling yards and junkyards properly licensed or pending license renewal to prevent towns from using this law improperly. The New Hampshire Municipal Association and the Auto Recycling Dealers support this bill as it updates the current process and gives municipalities an additional tool to clean up their own towns and cities. The Transportation Committee recommends HB 434 ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 435**, relative to certificates of registration upon transfer of a vehicle. Transportation Committee. Ought to pass, Vote 4-0. Senator Morse for the committee.

**SENATOR MORSE:** Thank you Mr. President. This bill was sponsored at the request of the Department of Safety. Currently, RSA 261:66 requires that an individual send their expired registration to the DMV if the car is not being used. The problem is, most people are unaware of this requirement and therefore don't. House Bill 435 simply changes the statute to allow an individual to retain the expired registration in order to obtain a transfer credit on it. The Transportation Committee recommends HB 435 ought to pass and asks for your support.

**Adopted.**

**Ordered to third reading.**

**HB 477**, establishing certain speed limits. Transportation Committee. Ought to pass, Vote 4-0. Senator Flanders for the committee.

**SENATOR FLANDERS:** Thank you Mr. President and members of the Senate. I move that HB 477 ought to pass. This bill will change speed zones to a continuous 55 miles per hour speed limit beginning at the edge of the Granite Lake bypass in Stoddard, New Hampshire, through the intersection of Applehead Road, on the westerly edge of Sullivan. Also, it will increase from 50 to 55 miles per hour, route 114 between Henniker and Bradford Village. Both of these routes have been recently updated. The Stoddard piece is a bypass and there is presently six different speed changes in 4.8 miles. It is certainly safe to increase this up to 55. The Henniker-Bradford has been all redone. It is a new road. It has been widened and it is certainly safe to put that at 55 miles per hour. There was no opposition to this bill at the time. The Department of Transportation supports the bill as well as the Department of Safety. I ask you to pass this bill so that our President can get to the State House a little quicker in the morning. Thank you very much.

#### **MOTION TO TABLE**

Senator D'Allesandro moved to have **HB 477** laid on the table.

**Adopted.**

#### **LAIID ON THE TABLE**

**HB 477**, establishing certain speed limits.

**HB 802-FN-A**, encouraging the department of transportation to retrofit a highway rest stop to be a solar powered facility. Transportation Committee. Ought to pass, Vote 4-0. Senator Morse for the committee.

**SENATOR MORSE:** Thank you Mr. President. I move HB 802 ought to pass. This bill encourages the Department of Transportation to retrofit a highway rest stop with solar power capabilities. It will also enable the Commissioner of the Department of Transportation to directly accept gifts, donations, or grants for the sole purposes of retrofitting a rest area with solar power. While HB 802 does not mandate any changes, it strongly encourages them. The Transportation Committee feels that this is a positive gesture for the legislature to make as the state and our local communities continue to look for alternative sources of clean energy and power for our future. I move HB 802 ought to pass and ask for your support.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 81-FN-A**, setting the rate for the medicaid enhancement tax for the biennium ending June 30, 2005. Ways and Means Committee. Ought to pass, Vote 3-0. Senator D'Allesandro for the committee.

**SENATOR D'ALLESANDRO:** Thank you Mr. President. I move ought to pass on HB 81-FN-A. This bill sets the biennial rate for the Medicaid Enhancement Tax as required by RSA 84-A:2 at 6 percent on the gross patient services revenue of every hospital. The rate has been set at 6 percent for many years and HB 81 will simply maintain existing law. The committee unanimously recommends ought to pass. Thank you Mr. President.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 172**, extending the committee to study the exemption from property taxes for not-for-profit hospitals, and including a study of the community benefit law. Ways and Means Committee. Ought to pass, Vote 5-0. Senator D'Allesandro for the committee.

**SENATOR D'ALLESANDRO:** Thank you Mr. President. I move ought to pass on HB 172 which will extend the reporting date for the committee to study the exemption from property taxes for not-for-profit hospitals to November 2003. Twenty-four of the twenty-six major hospitals in the state are not-for-profits, many of which are critical to the health and safety of the North Country and are struggling to stay afloat. The bill also charges the committee to study the Community Benefits Law, which has been extremely successful at creating and strengthening bonds between hospitals and the community at large. Some of the services that owe their existence to the community benefits law include vaccination programs, healthcare for indigent and low income citizens and other means of community outreach and service. The committee unanimously recommends ought to pass. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 60**, changing the name of the advisory committee on shore fisheries and relative to the definition of shellfish and a rulemaking exemption for certain rules relating to marine species. Wildlife and Recreation Committee. Ought to pass, Vote 4-0. Senator Gallus for the committee.

**SENATOR GALLUS:** Thank you Mr. President. I move HB 60 ought to pass. The bill makes three main revisions to our current statutes. First, it changes the name of the Advisory Committee on Shore Fisheries to the Advisory Committee on Marine Fisheries. The name change better reflects the statutory responsibility of the committee. Currently their members meet with the Fish and Game Department to make recommendations on a number of matters pertaining to state, interstate, and federal marine issues, not just shore fishery issues. Second, HB 60 modifies the statutory definition of a shellfish by defining a scallop. And third, the bill clarifies the Fish and Game Department's rulemaking exemption for rules relating to marine species under the Atlantic States Marine Fisheries Compact. The committee recommends HB 60 ought to pass and asks for your support. Thank you.

**Adopted.**

**Ordered to third reading.**



**HB 112-FN**, establishing a point system for the annual moose permit lottery. Wildlife and Recreation Committee. Ought to pass, Vote 3-0. Senator Roberge for the committee.

**SENATOR ROBERGE:** Thank you Mr. President. I move HB 112 ought to pass. This bill establishes a point system for the Department of Fish and Game's annual moose permit lottery. With the new point system, any person who purchases an application for a moose permit will earn one point for each consecutive year they apply. Each point entitles that person to one chance in the public drawing. If a person is selected to receive a permit or that person fails to purchase a new chance, their accumulated points will be eliminated. It has been suggested that this system will be helpful in the short-term by bringing attention to the lottery and encouraging people to submit applications with the idea that each year they participate, their odds of winning a permit are increased. In the long-run, we are hopeful that the system will encourage a consistent stream of return applicants. A hunter who has applied for a moose permit for 8 to 10 years will be more likely to apply again the following year or years so they don't lose their extra points and chances in the lottery. Another potential benefit to the moose permit lottery is increased state revenues. After Maine successfully updated their permitting system to the "Multiple Chance Program", their revenue increased significantly. In 1997 under the "Single Chance Program", Maine's total revenues were \$630,000. Just a few years later in 2001, following the implementation of the new lottery, Maine nearly doubled their revenues by bringing in \$1.2 million. The Wildlife Committee recommends ought to pass and asks for your support. We have an amendment changing the effective date from 2003 to 2004 at the request of the Fish and Game.

**SENATOR LARSEN:** Senator Roberge, I am seeing in the hearing report that at the time of the hearing at least, the Department of New Hampshire Fish and Game opposed the bill. Am I to understand that it is now been agreed to at that point, that they argued that it would result in...they were concerned that it might result in decreased revenues over time?

**SENATOR ROBERGE:** We solved that problem by changing the effective date, Senator Larsen.

**SENATOR LARSEN:** Okay. Thanks.

Senator Roberge offered a floor amendment.

Sen. Roberge, Dist. 9

**April 22, 2003**

**2003-1346s**

**10/04**

### **Floor Amendment to HB 112-FN**

Amend RSA 208:1-a, II-a as inserted by section 2 of the bill by replacing it with the following:

II-a. Any permit lottery established under paragraph II shall include a bonus point system as a weighing factor to benefit applicants not drawn in the annual moose permit lottery. Beginning with the 2004 lottery, the moose permit lottery shall allow a person to accumulate one point for each consecutive year that person legally purchases an application for a permit but is not selected to receive a permit. Each point entitles that applicant to one chance in the lottery. A person's accumulated points shall be non-transferable and shall be forfeited if, in any year, that person is selected to receive a permit or that person fails to purchase a new chance.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 244**, establishing a committee to study landowner liability for owners providing public access to snowmobile trails. Wildlife and Recreation Committee. Ought to pass with amendment, Vote 4-0. Senator Roberge for the committee.

**Wildlife and Recreation**

**April 15, 2003**

**2003-1293s**

**10/09**

**Amendment to HB 244**

Amend subparagraph I(b) of section 2 of the bill by replacing it with the following:

(b) Two members of the senate, appointed by the president of the senate.

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

SENATOR ROBERGE: Thank you Mr. President. I move HB 244 ought to pass with amendment. This bill establishes a committee to study landowner liability for owners providing public access to snowmobile trails. As the sport of snowmobiling grows, it is important for the legislature to review current law regarding snowmobile use and landowner exposure. This is both an economic development issue and a land use issue for the state. While we want to encourage snowmobilers to come recreate in New Hampshire, we need to protect the rights of property owners. The committee amendment simply changes the Senate membership from four to two and reduces the number that constitutes a quorum from five to three. The Wildlife Committee recommends ought to pass as amended. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 481**, establishing a committee to study the pricing of milk products. Wildlife and Recreation Committee. Ought to pass with amendment, Vote 3-0. Senator Cohen for the committee.

**Wildlife and Recreation**

**April 16, 2003**

**2003-1291s**

**05/09**

**Amendment to HB 481**

Amend the bill by replacing paragraph I of section 2 with the following:

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Two members of the senate, appointed by the president of the senate.

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

SENATOR COHEN: Thank you Mr. President. I move HB 481 ought to pass with amendment. This bill establishes a study committee to investigate the factors that contribute to the pricing of dairy products and unfair methods of competition and trade practices. While the majority of us don't think twice about the cost of buying a gallon of milk or how much the average farmer profits or doesn't profit from that gallon, it's becoming a serious concern here in the state. Our dairy farmers are receiving 1970's level prices for their products. Slight increases in milk production and a weakening economy have dramatically affected the price of milk. The low prices being paid to farmers are unsustainable and may eventually result in a large-scale sell off of New Hampshire's remaining dairy farms, which are a long, proud part of New Hampshire's tradition and a part of our states identity. House Bill 481's study committee can take a closer look at these factors and potential solutions to help our dairy farmers before they all go out of business. The committee amended the bill to reduce the Senate membership to two Senate members from three and will require three members of the committee to constitute a quorum. On behalf of the Wildlife and Recreation Committee, I "moooooove" HB 481 ought to pass as amended. Thank you.

SENATOR BARNES: Senator Cohen, I think that this is something that is needed, but I have one question for you? Why don't we have a dairy farmer or dairy farmers on here? I happen to have a dairy farmer that has been yelling at me for six years about this very situation and would you and the committee agree that if we table this to put that amendment in, to add some dairy farmers and some representation on that committee, would it be alright?

SENATOR COHEN: Well this is a study committee not a study commission. A study committee, therefore, is limited to legislators. We certainly...I would hope that we would listen very carefully to the dairy farmers. I don't know who else could be more important than...seeking their active participation.

SENATOR BARNES: I guess that I am just concerned about the makeup of the committee. I don't think that looking around at my colleagues, I don't think that I see anybody here that knows too much about cow manure and about milking cows. I think that we need somebody that knows something about the subject matter.

SENATOR COHEN: If I may suggest...Stratham is no longer part of my district, Stratham is part of Senator Prescott's district, perhaps he could be on the committee, since there are some active dairy farms in Stratham.

SENATOR BARNES: Excuse me, I didn't realize that you were a dairy farmer.

### **Amendment adopted.**

Question is on the adoption of the bill as amended.

SENATOR LARSEN: I rise to applaud Representative Owen who is the sponsor of this bill and the committee for recognizing the need to address this in New Hampshire. Those of us who have been around the Senate

long enough, know that the dairy farmers of this state have been struggling for some time. Even in my district there are dairy farmers who I know work very hard, but because of national milk pricing and the increasing takeover of processors from far away, taking over the industry, it is a struggling business, and one which all of us value its product and we need to pay some attention to how to encourage their continuation in our state. I think that this is a good "moove".

**Recess.**

**Out of recess.**

### **MOTION TO TABLE**

Senator Clegg moved to have **HB 481** laid on the table.

**Adopted.**

### **LAIID ON THE TABLE**

**HB 481**, establishing a committee to study the pricing of milk products.

### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 104**, relative to state administration of medicaid benefits and services for individuals who are deaf or hard of hearing.

### **SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 104**, relative to state administration of medicaid benefits and services for individuals who are deaf or hard of hearing.

Senator Martel moved to concur.

**Adopted.**

### **RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be by this resolution read a third time and all titles be same as adopted, and that they be passed at the present time

**Adopted.**

### **LATE SESSION**

#### **Third Reading and Final Passage**

**HB 57**, relative to the use of inhalers by pupils and campers with asthma.

**HB 59**, relative to court reporting.

**HB 60**, changing the name of the advisory committee on shore fisheries and relative to the definition of shellfish and a rulemaking exemption for certain rules relating to marine species.

**HB 77**, establishing a committee to study the process of de novo appeals from the district courts.

**HB 92**, relative to the use of epinephrine auto-injectors by pupils and campers with severe allergies.

**HB 132**, relative to state scholarships for orphans of veterans.

**HB 172**, extending the committee to study the exemption from property taxes for not-for-profit hospitals, and including a study of the community benefit law.

**HB 184**, relative to distribution upon intestacy.

**HB 185**, relative to pretermitted heirs.

**HB 212**, defining "terrorize" for the purpose of criminal threatening.

**HB 244**, establishing a committee to study landowner liability for owners providing public access to snowmobile trails.

**HB 418**, relative to annulment of arrest records for defendants whose cases result in acquittal, dismissal, or failure to prosecute.

**HB 434-L**, relative to junkyards and motor vehicle recycling yards.

**HB 435**, relative to certificates of registration upon transfer of a vehicle.

**HB 616-FN-L**, relative to the Hampton real estate trust fund.

## ANNOUNCEMENTS

### RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, processing Enrolled Bill Reports and Amendments, and receiving House Messages, and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

**In recess to the Call of the Chair.**

**Out of Recess.**

### HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 135-FN-L**, relative to charter schools.

**HB 159**, relative to meetings of the directors of nondepository trust companies.

**HB 160**, relative to removal or replacement of trustees.

**HB 242**, relative to the number of members on, and quorum necessary for, the assessing standards board.

**HB 288-FN**, imposing a criminal penalty for the dissemination of certain materials without consent.

**HB 293**, establishing a commission to identify medical errors and their causes.

**HB 302-FN**, relative to the funding and use of the retirement system special account.

**HB 316-FN**, relative to insurance coverage for anesthesia for child dental care.

**HB 404**, relative to common trust funds.

**HB 431**, eliminating application of the rule against perpetuities to instruments that contain safeguards relative to the continued alienability of property.

**HB 564-FN**, relative to access to information in proceedings of the judicial conduct commission.

**HB 638-FN**, increasing the oil import license fee, changing the rate of interest assessed on overdue oil import fees, and repealing underground storage facility permit fees.

**HB 684-FN**, relative to the insurance rating law.

**HB 786-FN-L**, relative to the participation of the state and its political subdivisions in the federal No Child Left Behind Act of 2001.

**HB 787-FN-A**, relative to forest products promotion, establishing a forest products utilization charge, and requiring the department of resources and economic development to convene a task force.

**HB 788-FN-A**, transferring the duties of the health services planning and review board.

**HCR 14**, a resolution declaring the directives of the judicial branch in the Claremont cases that the legislative and executive branches define an "adequate education," adopt "standards of accountability," and "guarantee adequate funding" of a public education are not binding on the legislative and executive branches.

### INTRODUCTION OF HOUSE BILLS

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **135 - HCR 14** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 135-FN-L**, relative to charter schools. (Education)

**HB 159**, relative to meetings of the directors of nondepository trust companies. (Banks)

**HB 160**, relative to removal or replacement of trustees. (Banks)

**HB 242**, relative to the number of members on, and quorum necessary for, the assessing standards board. (Internal Affairs)

**HB 288-FN**, imposing a criminal penalty for the dissemination of certain materials without consent. (Judiciary)

**HB 293**, establishing a commission to identify medical errors and their causes. (Executive Departments and Administration)

**HB 302-FN**, relative to the funding and use of the retirement system special account. (Insurance)

**HB 316-FN**, relative to insurance coverage for anesthesia for child dental care. (Insurance)

**HB 404**, relative to common trust funds. (Banks)

**HB 431**, eliminating application of the rule against perpetuities to instruments that contain safeguards relative to the continued alienability of property. (Public Affairs)

**HB 564-FN**, relative to access to information in proceedings of the judicial conduct commission. (Executive Departments and Administration)

**HB 638-FN**, increasing the oil import license fee, changing the rate of interest assessed on overdue oil import fees, and repealing underground storage facility permit fees. (Transportation)

**HB 684-FN**, relative to the insurance rating law. (Insurance)

**HB 786-FN-L**, relative to the participation of the state and its political subdivisions in the federal No Child Left Behind Act of 2001. (Education)

**HB 787-FN-A**, relative to forest products promotion, establishing a forest products utilization charge, and requiring the department of resources and economic development to convene a task force. (Energy & Economic Development)

**HB 788-FN-A**, transferring the duties of the health services planning and review board. (Insurance)

**HCR 14**, a resolution declaring the directives of the judicial branch in the Claremont cases that the legislative and executive branches define an "adequate education," adopt "standards of accountability," and "guarantee adequate funding" of a public education are not binding on the legislative and executive branches. (Internal Affairs)

**April 30, 2003**  
**2003-1446-EBA**  
**03/09**

#### **Enrolled Bill Amendment to SB 104**

The Committee on Enrolled Bills to which was referred SB 104

**AN ACT** relative to state administration of medicaid benefits and services for individuals who are deaf or hard of hearing.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

#### **FOR THE COMMITTEE**

#### **Explanation to Enrolled Bill Amendment to SB 104**

This enrolled bill amendment clarifies a reference in the bill.

#### **Enrolled Bill Amendment to SB 104**

Amend section 2 of the bill by replacing line 6 with the following: elderly affairs committee and the senate public institutions, health and human services committee with any

Senator Eaton moved adoption.

**Adopted.**

**April 30, 2003**  
**2003-1457-EBA**  
**08/10**

#### **Enrolled Bill Amendment to HB 57**

The Committee on Enrolled Bills to which was referred HB 57

**AN ACT** relative to the use of inhalers by pupils and campers with asthma.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

#### **FOR THE COMMITTEE**

#### **Explanation to Enrolled Bill Amendment to HB 57**

This enrolled bill amendment makes a technical correction and inserts provisions for contingent renumbering of the bill's RSA sections.

**Enrolled Bill Amendment to HB 57**

Amend RSA 200:42, I (f) as inserted by section 1 of the bill by replacing line 2 with the following:  
of confidentiality or if not contrary to the request of the parent or guardian to keep confidential.

Amend RSA 485-A:25-b, I (f) as inserted by section 2 of the bill by replacing line 2 with the following:  
of confidentiality or if not contrary to the request of the parent or guardian to keep confidential.

Amend the bill by replacing all after section 2 with the following:

3 New Subdivision; Education; Health and Sanitation; Use of Asthma Medications by Pupils. Amend RSA 200 by inserting after section 45 the following new subdivision:

**Use of Asthma Medications by Pupils**

200:46 Possession and Self-Administration of Asthma Inhalers Permitted. A pupil may possess and use a metered dose inhaler or a dry powder inhaler to alleviate asthmatic symptoms, or before exercise to prevent the onset of asthmatic symptoms, if the following conditions are satisfied:

I. The pupil has the written approval of the pupil's physician and, if the pupil is a minor, the written approval of the parent or guardian. The school shall obtain the following information from the pupil's physician:

(a) The pupil's name.

(b) The name and signature of the licensed prescriber and business and emergency numbers.

(c) The name, route, and dosage of medication.

(d) The frequency and time of medication administration or assistance.

(e) The date of the order.

(f) A diagnosis and any other medical conditions requiring medications, if not a violation of confidentiality or if not contrary to the request of the parent or guardian to keep confidential.

(g) Specific recommendations for administration.

(h) Any special side effects, contraindications, and adverse reactions to be observed.

(i) At least one emergency telephone number for contacting the parent or guardian.

(j) The name of each required medication.

II. The school principal or, if a school nurse is assigned to the pupil's school building, the school nurse shall receive copies of the written approvals required by paragraph I.

III. The pupil's parent or guardian shall submit written verification from the physician confirming that the pupil has the knowledge and skills to safely possess and use an asthma inhaler in a school setting.

IV. If the conditions provided in this section are satisfied, the pupil may possess and use the inhaler at school or at any school sponsored activity, event, or program.

V. In this section, "physician" includes any physician or health practitioner with the authority to write prescriptions.

200:47 Immunity. No school district, member of a school board, or school district employee shall be liable in a suit for damages as a result of any act or omission related to a pupil's use of an inhaler if the provisions of RSA 200:46 have been met, unless the damages were caused by willful or wanton conduct or disregard of the criteria established in that section for the possession and self-administration of an asthma inhaler by a pupil.



4 New Sections; Water Management and Protection; Safety Regulations; Possession and Use of Asthma Medication at Recreation Camps. Amend RSA 485-A by inserting after section 25-e the following new sections:

485-A:25-f Possession and Use of Asthma Inhalers at Recreation Camps. A recreation camp shall permit a child to possess and use a metered dose inhaler or a dry powder inhaler to alleviate asthmatic symptoms, or before exercise to prevent the onset of asthmatic symptoms, if the following conditions are satisfied:

I. The child has the written approval of the child's physician and the written approval of the parent or guardian. The camp shall obtain the following information from the child's physician:

- (a) The child's name.
- (b) The name and signature of the licensed prescriber and business and emergency numbers.
- (c) The name, route, and dosage of medication.
- (d) The frequency and time of medication administration or assistance.
- (e) The date of the order.
- (f) A diagnosis and any other medical conditions requiring medications, if not a violation of confidentiality or if not contrary to the request of the parent or guardian to keep confidential.
- (g) Specific recommendations for administration.
- (h) Any special side effects, contraindications, and adverse reactions to be observed.
- (i) The name of each required medication.
- (j) At least one emergency telephone number for contacting the parent or guardian.

II. The recreational camp administrator or, if a nurse is assigned to the camp, the nurse shall receive copies of the written approvals required by paragraph I.

III. The child's parent or guardian shall submit written verification from the physician confirming that the child has the knowledge and skills to safely possess and use an asthma inhaler in a camp setting.

IV. If the conditions provided in this section are satisfied, the child may possess and use the inhaler at the camp or at any camp sponsored activity, event, or program.

V. In this section, "physician" includes any physician or health practitioner with the authority to write prescriptions.

485-A:25-g Immunity. No recreational camp or camp employee shall be liable in a suit for damages as a result of any act or omission related to a child's use of an inhaler if the provisions of RSA 485-A:25-f have been met, unless the damages were caused by willful or wanton conduct or disregard of the criteria established in that section for the possession and self-administration of an asthma inhaler by a child.

5 Contingency; Effective Date; Renumbering. If HB 92 of the 2003 legislative session becomes law, then sections 3 and 4 of this act shall take effect August 15, 2003 and sections 1 and 2 of this act shall not take effect. If HB 92 of the 2003 legislative session does not become law, then sections 1 and 2 of this act shall take effect August 15, 2003 and sections 3 and 4 of this act shall not take effect.

6 Effective Date.

I. Sections 1-4 of this act shall take effect as provided in section 5 of this act.

II. The remainder of this act shall take effect upon its passage.

Senator Eaton moved adoption.

**Adopted.**

**April 30, 2003**  
**2003-1449-EBA**  
**06/10**

**Enrolled Bill Amendment to HB 92**

The Committee on Enrolled Bills to which was referred HB 92

AN ACT relative to the use of epinephrine auto-injectors by pupils and campers with severe allergies.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE**

**Explanation to Enrolled Bill Amendment to HB 92**

This enrolled bill amendment makes certain technical corrections to the bill.

**Enrolled Bill Amendment to HB 92**

Amend RSA 200:44 as inserted by section 1 of the bill by replacing line 2 with the following:

assigned to the school building, the school principal shall maintain for a pupil's use at least one

Amend section 2 of the bill by replacing line 2 with the following:

Epinephrine Auto-Injectors at Recreation Camps. Amend RSA 485-A by inserting after section 25-a the

Amend RSA 485-A:25-d as inserted by section 2 of the bill by replacing line 3 with the following:

a child with severe allergies at least one epinephrine auto-injector, provided by the child, in the

Senator Eaton moved adoption.

**Adopted.**

**April 30, 2003**  
**2003-1456-EBA**  
**05/10**

**Enrolled Bill Amendment to HB 59**

The Committee on Enrolled Bills to which was referred HB 59

AN ACT relative to court reporting.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE**

**Explanation to Enrolled Bill Amendment to HB 59**

This enrolled bill amendment makes technical corrections.

**Enrolled Bill Amendment to HB 59**

Amend RSA 331-B:2 as inserted by section 1 of the bill by replacing line 1 with the following:

331-B:2 Definitions. In this chapter:

Amend RSA 331-B:3, II as inserted by section 1 of the bill by replacing it with the following:

II. The board shall elect a chairperson and a secretary from its members on an annual basis.

Amend RSA 331-B:9, II as inserted by section 1 of the bill by replacing it with the following:

II. Has paid the fee required by this chapter; and

Senator Eaton moved adoption.

**Adopted.**

**April 24, 2003**  
**2003-1390-EBA**  
**04/10**

**Enrolled Bill Amendment to HB 182**

The Committee on Enrolled Bills to which was referred HB 182

AN ACT relative to unclaimed shares and advancements to heirs.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE**

**Explanation to Enrolled Bill Amendment to HB 182**

This enrolled bill amendment clarifies the statutory sections repealed by the bill.

**Enrolled Bill Amendment to HB 182**

Amend the bill by replacing paragraphs I and II of section 3 to read as follows:

I. RSA 561:14, relative to adjustment of the share of a decedent's estate distributed to an heir.

II. RSA 561:15, relative to transfer by deed as an advancement to an heir from a decedent's estate.

Senator Eaton moved adoption.

**Adopted.**

**April 22, 2003**  
**2003-1347-EBA**  
**06/09**

**Enrolled Bill Amendment to SCR 3**

The Committee on Enrolled Bills to which was referred SCR 3

AN ACT urging maintenance of funding for the Low Income Home Energy Assistance Program.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE**

**Explanation to Enrolled Bill Amendment to SCR 3**

This enrolled bill amendment makes a technical correction.

**Enrolled Bill Amendment to SCR 3**

Amend paragraph IV following the resolving clause by replacing line 1 with the following:

IV. Allowing states to draw-down funds prior to the start of the winter heating season in

Senator Eaton moved adoption.

**Adopted.**

**April 23, 2002**  
**2003-1374-EBA**  
**06/10**

**Enrolled Bill Amendment to SB 22**

The Committee on Enrolled Bills to which was referred SB 22

AN ACT amending the duties of the public higher education study committee.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE**

**Explanation to Enrolled Bill Amendment to SB 22**

This enrolled bill amendment makes a technical correction to the title of the bill.

**Enrolled Bill Amendment to SB 22**

Amend the title of the bill to read as follows:

AN ACT adding to the duties of the public higher education study committee.

Senator Eaton moved adoption.

**Adopted.**

**April 23, 2003**  
**2003-1364-EBA**  
**03/09**

**Enrolled Bill Amendment to HB 732-FN**

The Committee on Enrolled Bills to which was referred HB 732-FN

AN ACT relative to fines for forestry law violations, relative to deceptive forestry business practices, establishing a commission to study setback requirements for land application of septage, biosolids, and short paper fibers, and extending the temporary use of septage, biosolids, and short paper fiber by certain persons.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE**

**Explanation to Enrolled Bill Amendment to HB 732-FN**

This enrolled bill amendment corrects certain references in the bill and makes other technical changes. This enrolled bill amendment also inserts a provision to clarify the applicability of differing versions of the pleas by mail procedure.

**Enrolled Bill Amendment to HB 732-FN**

Amend section 4 of the bill by replacing line 1 with the following:

4 Pleas by Mail; Noncomputerized Courts. Amend RSA 502-A:19-b, I to read as follows:

Amend section 5 of the bill by replacing line 1 with the following:

5 Pleas by Mail; Computerized Courts. Amend RSA 502-A:19-b, I to read as follows:

Amend RSA 502-A:19-b, I as inserted by section 5 of the bill by replacing line 4 with the following:  
misdemeanor or felony; ~~and~~ the usual fines for violations of the provisions of title XVIII on fish and

Amend RSA 79:31, I as inserted by section 7 of the bill by replacing line 2 with the following:

average stumpage value list referenced in RSA 79:1, III(b).

Amend RSA 79:31, II as inserted by section 7 of the bill by replacing line 5 with the following:

available to the public on its internet site and by any other cost-effective means.

Amend subparagraph I(n) of section 10 of the bill by replacing line 1 with the following:

(n) One member of the Natural Resources Conservation Service, appointed by such

Amend the bill by inserting after section 14 the following and renumbering the original section 15 to read as 16:

15 Applicability; Pleas by Mail. Section 4 of this act shall apply only to courts which are not computerized in coordination with the division of motor vehicles. Section 5 of this act shall apply only to courts which are computerized in coordination with the division of motor vehicles.

Senator Eaton moved adoption.

**Adopted.**

### HOUSE MESSAGE

The House of Representatives has passed a Bill with the following title, in the passage of which it asks the concurrence of the Senate:

**HB 763-FN**, requiring parental notification before abortions may be performed on unemancipated minors.

### INTRODUCTION OF HOUSE BILL

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill(s) numbered **763** shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

**Adopted.**

### First and Second Reading and Referral

**HB 763-FN**, requiring parental notification before abortions may be performed on unemancipated minors. (Judiciary)

### REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

**HB 60**, changing the name of the advisory committee on shore fisheries and relative to the definition of shellfish and a rulemaking exemption for certain rules relating to marine species.

**HB 132**, relative to state scholarships for orphans of veterans.

**HB 172**, extending the committee to study the exemption from property taxes for not-for-profit hospitals, and including a study of the community benefit law.

**HB 182**, relative to unclaimed shares and advancements to heirs.

**HB 184**, relative to distribution upon intestacy.

**HB 435**, relative to certificates of registration upon transfer of a vehicle.

**HB 616-FN-L**, relative to the Hampton real estate trust fund.

**HB 732-FN**, relative to fines for forestry law violations, relative to deceptive forestry business practices, establishing a commission to study setback requirements for land application of septage, biosolids, and short paper fibers, and extending the temporary use of septage, biosolids, and short paper fiber by certain persons.

**SB 22**, adding to the duties of the public higher education study committee.

Senator D'Allesandro moved adoption.

**Adopted.**

### **REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

**HB 120**, relative to sessions for the correction of the checklist and sessions for changes of party registration.

**HB 181**, relative to limiting landowner liability for giving permission for horseback riding.

**HB 183**, relative to a distribution from a decedent's estate to a minor.

**HB 186**, relative to the effect of divorce or annulment upon trusts.

**HB 358-FN**, relative to recount fees in local elections.

**HB 485**, relative to the membership on the invasive species committee.

**SB 24**, relative to license revocations for DWI offenders under the age of 21.

**SB 26**, removing the penalty against teachers who fail to keep registers.

**SB 51-FN**, relative to membership on the New England Board of Higher Education.

**SB 68**, authorizing electronic certification of educational credentials.

Senator D'Allesandro moved adoption.

**Adopted.**

### **REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

**HB 61**, relative to the taking of migratory game birds in the Connecticut River zone.

**HB 104-FN**, implementing procedures for a hospital or safe haven to assume temporary care and control of an abandoned child and creating an exception to the crime of endangering the welfare of a child.

**HB 126**, relative to posting statutes at polling places.

**HB 156**, relative to weights and measures.

**HB 223**, relative to the temporary removal of inmates.

**HB 277-FN**, relative to an extended term of imprisonment for manslaughter and relative to jury findings which warrant an extended term of imprisonment.

**HB 469**, relative to areas of the state for hunting by crossbow.

Senator D'Allesandro moved adoption.

**Adopted.**

### **REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

**HB 151**, authorizing the county convention to contract and fund performance audits of county departments, authorizing employees of the Hillsborough and Rockingham county delegations, and relative to adoption of revisions and the budget process in city charters.

Senator D'Allesandro moved adoption.

**Adopted.**

### **LATE SESSION**

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*May 8, 2003*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good Morning! For nearly a week now, we have all been missing that Old Man. To someone from "away", it is very hard to explain the feeling of loss that settled over New Hampshire last Saturday as the news began to spread. It is as if little bits of each of us and all of us tumbled down the side of the mountain in the middle of Friday night along with the broken image of the Old Man of the Mountain. Our profile has been altered – and for many, that is very unsettling. And yet, what happened up at Franconia Notch last weekend, from the perspective of a geologist, was not a bad thing at all. In fact, if you think about it, Cannon Mountain today is more stable and secure and safer than it was just one week ago, because a dangerous and unbalanced outcropping has been removed and we do not like it one bit. What had been a wonderful symbol and reminder of stability and strength for all to see, has now become a surprise symbol of change and flexibility for us to deal with and reflect upon. Just as with mountains, so with legislative decision making – and all of life, for that matter: stability is comfortable and sometimes important, but often dangerous. Change and transformation is inevitable and frequently necessary and always unsettling. Isn't it a good thing that, at the end of the day, we are not the ones in charge?

Let us pray:

*God of changeless love, You constantly rearrange and reconfigure the profile of reality around us. Endow each one of us with a perspective that will enable us to see the entire mountain and not just the precious outcropping, and lead us towards what comes next, confident that even in the midst of the darkest nights, You are holding us up. Amen.*

Senator Barnes led the Pledge of Allegiance.

SENATOR LARSEN (RULE #44): Because the Old Man of the Mountain symbolizes so much to each of us living here in New Hampshire, I wanted to recognize his passing, together with you, after 10,000 years of watching over us, with an introduction beyond our usual routine. Some believed that we should replace the New Hampshire trademark, that unchanging profile, who in the words of our State Poet Laureate, "watches the seasons beneath granite brows." Others say that we should not replace our crumbled state symbol. Instead, recognizing as poet Donald Hall stated, "that it would be an attempt to impose immortality in a world that is not immortal." "Sometimes" he added, "you want a reminder that even the mountains change." Like the passing of an old friend, it will take time for the impact of this loss to settle in. Whatever the next step is, we should take the time to mark this reminder that even in this state, founded upon granite, we live in a world that is not immortal. In recognition of this, I would like you to join me in welcoming Ken Sheldon and his wife Christine. Christine where are you? I have lost you. There you are. From Hancock, New Hampshire. Ken tells me that he first came to New Hampshire as a child vacationing in the White Mountains with his family. After spending time as a camp counselor in the Monadnock region he was drawn to the Granite State and attended the University of New Hampshire. Ken was a pre-med, art major at UNH, which he says probably explains why he is a folk singer today. Except for a couple of brief stints in California, he has lived in New Hampshire ever since, traveling across New England and performing in schools, town halls and churches and telling stories set in the mythical town of Frost Heaves, New Hampshire. Upon hearing of the passing of the Old Man of the Mountain, he was moved to write "Goodbye Old Man" to give voice to his own feelings and those of others experiencing the loss. Please join me today in welcoming Ken Sheldon as he shares his ballad. Thank you Ken.

### INTRODUCTION OF GUESTS

SENATOR D'ALLESANDRO: Thank you Mr. President. It has been my position since I chaired Ways and Means in the last biennium, and this biennium, to report to you on a monthly basis the condition of our general fund revenues. Where we have sixty days left of this fiscal year, I think that it is important to recognize that we are on target in terms of our revenues, the general fund revenues. If you look at the pie, it indicates each source of revenue, and you have a replica of the chart before you. Each source of revenue, what they represent as a percentage of the general fund and how they are performing to date. We have had significant pluses in some areas. Our insurance tax has performed beyond our projections. Our state and legacy tax, which we have repealed, is performing beyond expectations. Where we have the deficiencies are in the business profits tax, which is not performing up to expectations and there has been some decline in the interest and dividends tax. But when you take the taxes and aggregate and you look at the percentages of the pie, at a time when the nation as a whole, is performing poorly, we are holding our own, which is really quite remarkable when you think that these projections were made by Ways and Means two years ago. Representative Alukonis who has chaired House Ways and Means at that time, and our Senate Ways and Means Committee, I think has to be given credit for doing a good job in terms of a conservative estimate of where our revenues were going to be. It is my projection, at this point in time, that we will make our revenue estimates for fiscal year 2003. As stated



by Revenue Administration, there are always things that happen over which we have no control. One of these things was a huge bequeath from the Estate and Legacy tax, which from one entity last month, we got a \$17 million financial plus, which is quite extraordinary. Quite extraordinary. So that is where we are and we will be doing our revenue projections on Friday. It is in the Calendar. Friday at 12:30. We will be going through the second round with both Revenue Administration and the Legislative Budget Office. If you have questions, I would be more than happy to answer them. You get this report on a monthly basis. I have been giving you this on a monthly basis since we started this. It has been for the last four years, with the help of the Legislative Budget Office. I must say that Jack Dianis and Mike Buckley have been extremely helpful in following this and charting this and so forth. One problem that we had that Senator Gatsas pointed out was in the past we have...the refunds have been a problem. Problematic, because they haven't appeared in the scheme. We are working on correcting that problem so that we will know when significant refunds are going to be given and we will be able to deduct those from our revenue. Thank you Mr. President.

SENATOR SAPARETO: Thank you Mr. President. Senator, I always bring up, when I am at Ways and Means, about the issue of the business enterprise tax and the business profits tax. I think that every time that we talk about a shortfall in one, we have to include what that increase is in the other. A \$39 million discrepancy in BET to BPT right now, needs to be pointed out when we fall below, then in that case, look at where we stand in projections with the two taxes, to both. I think that each time that we mention that, they have to be mentioned together.

SENATOR D'ALLESANDRO: That is a good point. When you look at the business taxes you really should aggregate, because it is only at the end of the year that Revenue Administration begins to separate and puts what is truly BPT and what is truly BET. So that is a good point. So you should look at these business taxes as one item.

SENATOR EATON (In the Chair): Senator D'Allesandro, we thank you so much. I know that you had an awesome Ways and Means Committee two years ago and I know that you have a great one this year, who we will be thanking two years from now. We appreciate it. And my uncle Horatio, I didn't mind giving up that money to help the State House.

SENATOR D'ALLESANDRO: Well he did his good deed.

SENATOR D'ALLESANDRO: This week one of our Senators celebrated his 45<sup>th</sup> wedding anniversary. Now that indeed is a milestone and his wife is to be commended. Senator Flanders celebrated his 45<sup>th</sup> wedding anniversary and I think that is something that we all should be very proud of.

SENATOR FLANDERS: I think that everybody here knows who deserves the credit. Thank you very much.

### COMMITTEE REPORTS

**HB 218**, relative to the definition of beneficially interested person. Banks Committee. Ought to pass, Vote 2-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you Mr. President. I move HB 218 ought to pass. It is normal practice for the Probate Courts to give notice of activities regarding decedent's estates. In current practice the trustee of a trust, where it is a beneficiary of an estate, is not notified by the Pro-

bate Court proceedings due to an oversight in the statute. This legislation will correct that. The Banks Committee asks your support for the motion of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 423**, relative to safe deposit boxes. Banks Committee. Ought to pass, Vote 3-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you Mr. President. I apologize to all of you that this is not as exciting as the cow manure bill, but we will give it our best shot. I move HB 423 ought to pass. Abandoned items within a safety deposit box are kept for five years and afterwards a public auction is held as is required by law. Often the contents of a safety deposit box are worth little value, yet a public auction must still be held. In many cases the cost of holding a public auction exceeds the value of the abandoned items. This legislation will allow abandoned items to also be sold by public sale or internet auction. This will allow the items to be placed on sale in a more cost-effective manner. The Banks Committee asks your support for this motion of ought to pass. If anyone really wants any information, I have about five pages of printed material that will tell you all about safety deposit boxes, but I didn't bring it over with me because I figured that you would all vote for this bill and go along with the committee without that information being made available to you. Thank you very much. I would appreciate your vote of ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 231**, requiring the department of education to develop a plan to address and reduce the number of persons awaiting vocational rehabilitation transition services. Education Committee. Ought to pass, Vote 2-0. Senator O'Hearn for the committee.

SENATOR O'HEARN: Thank you Mr. President. I move HB 231 ought to pass. This legislation will require the commissioner of the Department of Education to develop a plan to reduce the number of individuals waiting for vocational rehabilitation services. There have been increasing concerns between special education and vocational rehabilitation because there is a need for services for students coming out of high school who wish to enter the workforce. This reflects the success of special education programs in this state. The committee had the pleasure of hearing about the success stories of special education and vocational rehabilitation. However, many feel that vocational rehabilitation needs to inform pertinent individuals of the services available to disabled students sooner to make the transition from high school an easier one. The special education count in New Hampshire has risen 14 percent in the past five years, yet in New England only one-third of the transition aged youth receiving special education services accessed vocational rehabilitation. This is the only program that provides career counseling and job placement services to adults and youth with disabilities across all disability categories. Considering these factors, there is a need for this legislation. The Education Committee asks for your support for the motion of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HCR 3**, calling on the President and the Congress to fully fund the federal government's share of special education services in public elementary and secondary schools in the United States under the Individuals with Disabilities Education Act. Education Committee. Ought to pass with amendment, Vote 2-0. Senator Foster for the committee.

**Senate Education**

**April 24, 2003**

**2003-1386s**

**08/01**

**Amendment to HCR 3**

Amend the resolution by replacing the first paragraph after the resolving clause with the following:

That the New Hampshire general court urges the President and the Congress to fund 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States as promised under the Individuals with Disabilities Education Act to ensure that all children, regardless of disability, receive a quality education and are treated with the dignity and respect they deserve; and

SENATOR FOSTER: Thank you Mr. President. I move HCR 3 ought to pass with amendment. This resolution calls on the President and Congress to fully fund its share of education costs under IDEA (Individuals with Disabilities Education Act). Nearly thirty years ago the federal government promised to pay up to 40 percent of the education costs for special education students. The current funding level is approximately 16.5 percent. Covering the rest of that cost places a significant financial burden on our local municipalities and state. Please join the Education Committee in sending a message to Congress by voting for the motion of ought to pass with amendment. Thank you.

SENATOR O'HEARN: Just a clarification, Mr. President. I am not sure if Senator Foster had it quite right, but I know the blurb it is not right. It does say that the "federal government's share of special education costs." That is incorrect. It is up to 40 percent of the education costs for special education students. I just wanted to point that out as a clarification.

SENATOR PETERSON: Thank you Mr. President. I am certainly going to support this and know that similar resolutions have been forwarded in the past by this body and by this legislature. However, in our role as the First in the Nation Primary state, we are beginning already to see presidential candidates appear in our midst. One very effective way, I think, to forward the argument that the government should pay a greater share of special education costs is to ask the question when presidential candidates are speaking somewhere and ask them if they are willing to make a commitment to see that this actually happens. I know that our congressional delegation has been hard at work on this matter and the federal government originally, had in the legislation that they would pay up to 40 percent of the cost and yet fall considerably short of that now. Were they to pay more of these costs, it would amount to a tax cut for every property taxpayer in this state and indeed across the nation. So when the presidential candidates come forward, it is nice, I think, among the questions that we ask them to say "what is your position on this and what commitments can you give the citizens of New Hampshire." Thank you Mr. President.

SENATOR LARSEN: I would only rise to add that not only should we be talking with our presidential candidates who come through the state,

but also with our current members of congress as this message goes to them. My notes indicate that the President's proposed budget only calls for paying for 20 percent of special education costs. That is an increase from the 16.5 percent of current costs, but it still remains lower funded than it should be and results in our local property taxpayers paying more than was the problem from the passage of IDEA. Thanks.

**SENATOR BARNES:** Thank you Mr. President. My notes tell me that the previous administration of eight years of President, ex-President Clinton's administration did nothing about it.

**SENATOR SAPARETO:** Thank you Mr. President. Mr. President, I would really like to thank our current congressional delegation for all of their hard work for putting in amendments. Just most recently, there has been one, by one of our congressional delegates, and I know that they work very, very hard and I want to commend them for the action and the work that they have done in trying to further the funding of the special education costs. Thank you.

**Amendment adopted.**

**Question is on the adoption of the Resolution as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 578-FN-A**, establishing a program for self-certification by small quantity hazardous waste generators and making an appropriation therefor. Environment Committee. Ought to pass, Vote 5-0. Senator Barnes for the committee.

**SENATOR BARNES:** Thank you Mr. President. This is a good bill. The committee came out with a 5-0 vote. Please go along with this because it is good for the state. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 593-FN-L**, relative to solid waste facilities in small towns. Environment Committee. Ought to pass with amendment, Vote 3-0. Senator Cohen for the committee.

**Senate Environment**

**April 30, 2003**

**2003-1455s**

**06/09**

### **Amendment to HB 593-FN-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Small Town Exemption. Amend RSA 149-M:9 by inserting after paragraph XII the following new paragraph:

XIII.(a) No permit issued by the department to a town with a population of 5000 persons or fewer shall require the town to clean up an inactive, municipally owned, unlined landfill (inactive facility) if the town:

(1) Monitors the inactive facility in accordance with requirements established in RSA 485-C and RSA 149-M and rules adopted by the department.

(2) Continues to show, through monitoring devices, that the inactive facility is having no adverse impact, as defined in rules adopted by the department, on the environment.

(3) Has obtained approval of a closure plan from the department by January 30 of the calendar year in which the facility is scheduled to close by the department.

(b) A town which complies with the requirements of subparagraph (a) shall not lose grant funding for which the town is eligible under this chapter.

(c) This paragraph shall not apply to those facilities governed under the terms of 40 CFR Part 258.

2 Effective Date. This act shall take effect 60 days after its passage.

**2003-1455s**

### AMENDED ANALYSIS

This bill exempts towns with a population of 5,000 or fewer from cleaning up an inactive public solid waste facility as long as the inactive facility is monitored, the monitoring shows that it has no adverse impact on the environment, and approval of a closure plan has been obtained from the department. A town which complies with these requirements shall not lose its grant funding under RSA 149-M.

SENATOR COHEN: Thank you Mr. President. I move that HB 593 ought to pass with amendment, as was recommended by the committee. This bill will exempt towns with a population of 5,000 or fewer from cleaning up a closed public solid waste facility as long as it is and has been properly monitored, and the monitoring shows that the site has no adverse impact on the surrounding environment. Passage of this bill will allow small towns to avoid costly programs that do not necessarily benefit them or the environment. If a site is already being properly monitored and there is no negative effect on the environment, then there is no need for the town to put up large sums of money to correct a non-existent problem. This bill is supported by all interested parties, including the Department of Environmental Services. The committee recommends ought to pass. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 728-FN-A**, establishing a dedicated fund for organic certification inspections. Environment Committee. Ought to pass, Vote 3-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you Mr. President. I move that HB 728 ought to pass as was recommended by the Senate Environment Committee. This bill will establish a dedicated fund for organic certification inspections, which heretofore has not been allowed in our state. Testimony given to the committee revealed that the organic foods industry is growing very quickly, and therefore, requires certain certification under federal guidelines. Currently, organic food packagers in our state have been forced to receive their certification from other states such as Massachusetts, because our state does not have a certification program. As a result, our organic packagers in the state are sending their business out of New Hampshire. Excess monies will be deposited in the general fund. This bill will allow the New Hampshire Department of Agriculture to start its own certification program. We believe that we should take pride in our own

organic foods industry, and this is one step toward doing so. The committee recommends that this bill ought to pass and I ask the full Senate to support the recommendation. Thank you Mr. President.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 208**, relative to name changes for inmates and parolees. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Estabrook for the committee.

SENATOR ESTABROOK: Thank you Mr. President. I move ought to pass on HB 208, which would require the Department of Corrections to be informed when an inmate files a petition to change his or her name and to be informed of the subsequent ruling on the petition by the Probate Court. If the person who files the petition is no longer under the supervision of the Department of Corrections, such as someone required to register as a sexual offender or as an offender against children, then the petitioner would be required to inform the Department of Safety. The bill also allows the state agency to make a defense against the name change. House Bill 208 will help those state agencies responsible for monitoring offenders to know where the offenders are and who they are at all times. The committee unanimously recommends ought to pass. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 211**, relative to town clerk fee deposit requirements. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you Mr. President. I move ought to pass on HB 211, which requires town and city clerks to deposit fees in the municipalities general fund before withdrawing the fees. The practice of the town and city clerks collecting certain fees is a part of or all their compensation reporting to the town, what has been collected afterward is a procedure that worked well when clerks had fewer responsibilities. Today, with more money to collect and additional regulations to follow, requiring deposit in full of all fees collected, would provide better municipal bookkeeping and accountabilities for those funds. The committee unanimously recommends ought to pass. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 258**, relative to the community-technical college system. Executive Departments and Administration Committee. Rerefer to committee, Vote 4-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you again, Mr. President. At the request of the sponsors, all of whom would like the opportunity to put more work into this bill, I move rereferred on HB 258. Thank you Mr. President.

**Committee report of rereferred is adopted.**

**HB 281-FN**, exempting automatic irrigation system installers from licensure by the electrician's board. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 4-0. Senator Estabrook for the committee.

**Senate Executive Departments and Administration****April 25, 2003****2003-1396s****08/01****Amendment to HB 281-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to regulation of irrigation system electricians by the electrician's board.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraphs; Definitions. Amend RSA 319-C:2 by inserting after paragraph I the following new paragraphs:

I-a. "Automatic irrigation system installations" means the installation, repair, alteration, and maintenance of electrical conductors, fittings, devices, fixtures and equipment, for automatic irrigation systems operating at 30 volts or less. The term does not include the installation of the controller supply circuit. This shall not prohibit installing a supply circuit that only includes the insertion of an attachment plug or transformer into a fixed receptacle outlet.

I-b. "Automatic irrigation system electrician" means a person who, as a business, hires or employs another to make electrical installations on automatic irrigation systems operating at less than 30 volts, or without hiring another, makes electrical installations on automatic irrigation systems operating at less than 30 volts, including associated controls as a principal or auxiliary business for its own account.

II-c. "Automatic irrigation system electrician trainee" means a person who is engaged in learning and assisting in making electrical installations under the direct supervision of a automatic irrigation system electrician, a journeyman electrician as defined in RSA 319-C:2, IV, or a master electrician.

2 Rulemaking. Amend the introductory paragraph of RSA 319-C:6-a, II to read as follows:

II. The qualifications of applicants, *other than an applicant for an automatic irrigation system electrician or trainee*, in addition to those requirements established under this chapter, and including the qualifications for satisfactory evidence of:

3 New Paragraph; Rulemaking. Amend RSA 319-C:6-a by inserting after paragraph II the following new paragraph:

II-a. The qualifications of applicants for automatic irrigation system electrician or trainee in addition to those requirements established under this chapter, and including satisfactory evidence of good professional character.

4 New Paragraph; Licensing Requirements. Amend RSA 319-C:7 by inserting after paragraph II-a the following new paragraph:

II-b. The board shall issue a license as an automatic irrigation system electrician to any person who files an application and shows proof of successfully completing a national, state, or employer certification program approved by the board.

5 Renewal of Licenses. Amend RSA 319-C:9, II to read as follows:

II. Upon request of a master, journeyman, ~~for~~ high/medium voltage, *or automatic irrigation system* electrician who is serving in the Armed Forces of the United States, the board shall place such licensee on inactive status. The license for a master or journeyman electrician may be reactivated within one year of discharge by payment of the renewal fee

and with proof of completion of the most current continuing education requirement. The license for a high/medium voltage **or automatic irrigation system** electrician shall be reactivated within one year of discharge by payment of the renewal fee.

6 New Paragraph; Corporations and Partnerships. Amend RSA 319-C:10 by inserting after paragraph II the following new paragraph:

III. The board may issue a license to corporations or partnerships engaged in the business of making electrical installations on automatic irrigation systems operating at less than 30 volts; provided, that one or more officers or employees of any such corporation directly in charge of the electrical business affairs of such corporation, or a member of a partnership directly in charge of its business affairs, is a licensed master electrician or a automatic irrigation system electrician.

7 Effective Date. This act shall take effect July 1, 2003.

2003-1396s

### AMENDED ANALYSIS

This bill requires licensing for automatic irrigation system electricians.

SENATOR ESTABROOK: Thank you Mr. President. I move ought to pass with amendment on HB 281. Currently, RSA 319-C requires irrigation contractors to hire a master electrician for the low voltage wiring in lawn irrigation systems. A law not enforced prior to a July 2001 incident. The electricians and the irrigation contractors met to develop a process that would license irrigation contractors to do this work because from the electrician's point of view, low voltage wiring work is irregular work and undesirable. From the irrigation contractors view, they could not afford to hire a master electrician full-time. They formed a committee made up of irrigation contractors, the New Hampshire Electrician's Board and the Electrical Contractors Business Association. The committee met from July 2001 to January of 2003 and unanimously concluded that there should be some qualification to do this work, but that a master electrician was not necessary. So they brought forward HB 281, which as introduced, would have required irrigation contractors to be licensed for low voltage wiring and was supported by all parties. However, believing they were doing irrigation contractors a favor, the House amended the bill to exempt irrigation contractors from being licensed, thus forcing electricians to do the work and possibly putting irrigation contractors out of work. Neither the electricians nor the irrigation contractors supported the changes by the House. The Senate Committee amended HB 281 by restoring the bill to its original form, the form supported by the New Hampshire Electricians' Board, the Electrical Contractors Businesses Association and the Irrigation Association. We unanimously recommend ought to pass with amendment. Thank you Mr. President.

SENATOR CLEGG: Thank you Mr. President. I rise in opposition to the amendment. While the House did send over a bill, the bill was to exempt low voltage wiring. Someone who has done this work for many, many years, I can tell you that it's never required an electrician's license. No electrical inspector in the state of New Hampshire has ever required an inspection. Let me talk about low voltage wiring. Your telephone wire is low voltage wiring. Now I can tell you that the electricians came in to me this year and said, "would you support a bill?" That bill was to stop people from doing any kind of electrical wiring outside of their house. That included the light on the outside of your house. Maybe a little wire that goes to that woodshed in the back so that you can put a light bulb



in. I said no. It is not required now and it shouldn't be. Why did the electrician's come in? Well because if they can get this passed, they would have another general income of \$12,125 according to the note. Why don't the irrigation companies care about this? Well I am already in business so if I close the loop now, nobody else can be my competition. That is what this is all about. It is about limiting your competition. We've already done it once, when we said that you can do fertilizer on your lawns, but you can't pay me \$50 to spread it. So every chance they get, they limit the ability of people to go into business and to compete without getting another license and creating bureaucracy. That is what this amendment does. Instead of limiting government, and making it easier for people to become entrepreneurs, it makes it more difficult and shuts out their competition and allows those who are, to remain wealthy. Thank you.

**Senator Prescott moved to recommit.**

SENATOR ESTABROOK: Thank you Mr. President. I don't see the need to recommit this bill since should we do that, there would only be a few alternatives open to us. We could leave the present situation requiring a master electrician. We could exempt them, something that no one involved...none of the parties involved want to see happen, or we could take the very drastic step of going from the current law, which requires a current electrician to requiring no qualifications.

SENATOR EATON (In the Chair): We are not debating the qualifications, only the motion of recommit.

SENATOR EASTABROOK: These are the alternatives that will be available to the committee should we recommit. I do not believe that the arguments that we have been presented merit its reconsideration by the committee.

**MOTION TO TABLE**

Senator Barnes moved to have **HB 281-FN** laid on the table.

**Adopted.**

**LAID ON THE TABLE**

**HB 281-FN**, exempting automatic irrigation system installers from licensure by the electrician's board.

**HB 320**, relative to permitting additional contributions in the city of Manchester employees contributory retirement system. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 4-0. Senator Prescott for the committee.

**Senate Executive Departments and Administration**

**April 24, 2003**

**2003-1388s**

**10/09**

**Amendment to HB 320**

Amend the bill by replacing all after section 2 with the following:

3 Referendum. At an election to be held in the city in either September or November, 2003, the city clerk then in office shall cause to be included on the ballot the following statement and question: "A contributory retirement plan for city employees was adopted by the voters of Manchester at the November 1973 election. The plan became effective in January 1974, and now, benefit improvements are requested. Are you in favor of the passage of an act of the General Court of 2003, amend-

ing sections 5 and 9 of the city of Manchester employees contributory retirement system to provide for additional contributions and vacancies in the board of trustees?" Beneath this statement and question shall be printed the word "Yes" and the word "No" with a square immediately opposite such word in which the voter may indicate his or her choice. If a majority of the voters present and voting on the question shall signify their approval thereof, this act shall be declared adopted effective as of the date of the election, except as otherwise provided within the act. The city clerk shall, within 10 days after said election, certify to the secretary of state the result of the vote on the question.

4 Manchester Retirement System Legislation; HB 321 of the 2003 Session; Election Date for Referendum Corrected. Amend section 3 of HB 321 of the 2003 legislative session to read as follows:

3 Referendum. At ~~the~~ **an** election to be held in the city in *either September or* November, ~~[2004]~~ **2003**, the city clerk then in office shall cause to be included on the ballot the following statement and question: "A contributory retirement plan for city employees was adopted by the voters of Manchester at the November 1973 election. The plan became effective in January 1974, and now, benefit improvements are requested. Are you in favor of the passage of an act of the General Court of 2003, amending sections 16 and 18 of the city of Manchester employees contributory retirement system to provide for changes in accidental and ordinary death benefits?" Beneath this statement and question shall be printed the word "Yes" and the word "No" with a square immediately opposite such word in which the voter may indicate his or her choice. If a majority of the voters present and voting on the question shall signify their approval thereof, this act shall be declared adopted effective as of the date of the election, except as otherwise provided within the act. The city clerk shall, within 10 days after said election, certify to the secretary of state the result of the vote on the question.

#### 5 Effective Date.

I. Section 3 of this act, relative to the referendum, shall take effect upon its passage. If the provisions of sections 1 and 2 of this act shall be adopted as provided in section 3, said provisions shall be declared adopted and shall become effective on the date of the election.

II. The remainder of this act shall take effect upon its passage.

**2003-1388s**

### AMENDED ANALYSIS

This bill allows for additional contributions for retirement benefits for members of the Manchester retirement system. The bill also provides for continuity of members of the board of trustees. The provisions of the bill are subject to a referendum vote in the city of Manchester.

The bill also corrects the date of the election in the city of Manchester for HB 321 of the 2003 legislative session.

SENATOR PRESCOTT: Thank you Mr. President. I move ought to pass with amendment on HB 320. The bill requests two changes to the Manchester employees Contributory Retirement System. When passed the legislature and signed by the Governor, it will put the referendum on the ballot this fall. First, the bill establishes a procedure to replace board members who retire. Currently, the board member is removed upon retirement. House Bill 320 will allow the board member to stay on the board until a replacement is identified. Secondly, the bill allows members of the retirement system to pay into the system

if they plan to leave employment before retirement age and do this without penalty. Currently, employees who join the system after 1974 pay a two percent penalty if they retire before age 60. House Bill 320 mimics the language in our state retirement system and treats all city employees equally. The committee amended the bill to allow the city clerks some flexibility as to when House Bill 320 and also HB 321 relative to accidental death benefits, a bill that has passed the House and Senate and has been signed by the Governor, will be put onto the Manchester referendum ballot. The committee recommends ought to pass with amendment. Thank you Mr. President.

SENATOR BARNES: Senator Prescott, do you have any numbers of how much this might cost the city of Manchester if they pass this on the ballot? Perhaps one of the Senators from Manchester can answer that question.

SENATOR D'ALLESANDRO: I don't know that we could have a handle on the exact cost, but Manchester has a unique retirement system. This retirement system was instituted in 1974 by an act of the legislature, but the unique aspect of the retirement system is all of these financial details have to be brought to the people of the city of Manchester. That is all that we approve is the ability of the city, to put a referendum together. Unless that referendum is approved by the local municipality, nothing that we have authorized takes place. It is a rather unique situation. So it is up to the city to present those numbers. Senator Gatsas is a member of the Board of Mayor and Aldermen, they get the actuarial studies and all of those costs brought forth. We never enter into that at the state level, that is all that we do is to authorize these changes to take place, to be brought forth in a local referendum. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 368**, making technical corrections to the statutory list of dedicated funds. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Cohen for the committee.

SENATOR COHEN: I will try again. Thank you Mr. President. I move ought to pass on HB 368, which is a follow up piece of legislation to one signed into law last year that reorganized and streamlined the dedicated funds under RSA 6:12. This bill applies a simpler, and easier to reference, numerical system than the alphabetical system put in place last session. The bill also removes references to the funds that were never funded, such as the Inventor's Assistance Program Fund, or where under-funded, such as the New Hampshire Heritage Trust Fund which currently holds \$800. The committee recommends ought to pass. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 543**, relative to increasing the membership of the board of accountancy and relative to appeals of board decisions. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 3-0. Senator Prescott for the committee.

**Senate Executive Departments and Administration****April 24, 2003****2003-1389s****10/09****Amendment to HB 543**

Amend RSA 309-B:12, X as inserted by section 2 of the bill by replacing it with the following:

X. Any person or firm adversely affected by any order of the board entered after a hearing under this section may appeal such order by filing a written petition with the superior court in the county in which the respondent resides or, if not a resident of this state, in the county in which the respondent has a place of business or resident agent. The petition shall be filed within 30 days after the entry of the order. ~~[The respondent shall exhaust all applicable administrative procedures before periodical review may commence.]~~ ***An appeal shall suspend the order of the board. The record of the hearing of the board's action shall be presented to the superior court for its review and the superior court may affirm, reverse, or modify the board's order, or may order a trial de novo without a jury, as justice may require.*** The procedures for review and the scope of the review ***of an appeal to the supreme court*** shall be ~~[as specified in RSA 541-A, the New Hampshire Administrative Procedure Act]~~ ***pursuant to RSA 541.***

SENATOR PRESCOTT: Thank you Mr. President. I move ought to pass with the amendment of HB 543. The Board of Accountancy is a small board consisting of five members and frequently finds it necessary to recuse a board member for the purpose of assisting in an investigation for the prosecution of a complaint. In addition, illness or absence of just one member causes substantial delays. House Bill 543 increases the membership to seven members and the quorum to four members in order to meet the boards concerns. The bill also provides for an appeals process that permits for a factual and law review before the Superior Court. The committee adopted an amendment clarifying that a factual and law review is part of the appeals process. The committee recommends ought to pass with amendment. Thank you Mr. President.

SENATOR GREEN: Mr. President, before you assign the bill, I would like to make a request.

SENATOR EATON (In the Chair): Go right ahead.

SENATOR GREEN: I would like to request that this bill be sent to Finance please?

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 617-FN**, relative to the licensure of dentists and regulation by the board of dental examiners. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 2-0. Senator Peterson for the committee.

Senate Executive Departments and Administration  
 April 22, 2003  
 2003-1344s  
 10/01

**Amendment to HB 617-FN**

Amend the bill by replacing sections 7 and 8 with the following:

7 Professional Misconduct; Guidelines. Amend the introductory paragraph of RSA 317-A:17, II(g) to read as follows:

(g) Failure to follow the current guidelines of the American Dental Association, *as adopted, in whole or in part, by the board, as published in:*

8 Professional Misconduct; Code of Ethics. Amend RSA 317-A:17, II(j) to read as follows:

(j) Knowingly or willfully violating any provision of this chapter, any substantive rule or order of the dental board, ~~[the code of ethics of the New Hampshire Dental Society or the American Dental Association; or]~~ any federal, state or local controlled drug law or other federal, state, or local laws or regulations pertaining to the practice of dentistry, *and the code of ethics of the American Dental Association as reviewed and approved, in whole or in part, by the board.*

SENATOR PETERSON: Thank you Mr. President. I move ought to pass with amendment on HB 617. House Bill 617 does four things. First, the bill clarifies the scope of the duties of the dental hygiene member of the board to issues other than clinical practice of dentistry for which the hygienists are not qualified. Second, the bill creates the position of Vice President to assume the duties of the President in his or her absence. And following a recommendation by the Joint Legislative Committee on Administrative Rules, the bill also puts the practice of licensing by endorsement or on the basis of ones credentials in statute. The authority to do so has been inferred from existing law for many years and the language used in the bill is currently in Administrative Rules. Lastly, the bill follows through on the Attorney General's recommendation to adopt, in whole or in part, the Code of Ethics Guidelines of the American Dental Association. The committee amended the bill to clarify the process by which the American Dental Association Guidelines are adopted. The committee recommends ought to pass. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 791-FN-A**, establishing a rest area and state liquor store retail opportunities commission. Executive Departments and Administration committee. Inexpedient to legislate, Vote 4-0. Senator Prescott for the committee.

SENATOR PRESCOTT: Thank you Mr. President. I move inexpedient to legislate on HB 791. This raised concerns about current lack of retail space at liquor stores and rest areas to justify the study of the sale of alternative products that would take up additional valuable space. The committee recommends inexpedient to legislate. Thank you Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**MOTION TO REMOVE FROM THE TABLE**

Senator D'Allesandro moved to have **HB 477** removed from the table.

**SENATOR D'ALLESANDRO:** Thank you. House Bill 477 is a piece of legislation that has to do with the restriction of speeds. I want to offer a floor amendment that deals with the same issue. It is a floor amendment that gives permissive action to the city of Manchester to lower the speeds in the alleys, in the service alleys in the city of Manchester. It was brought to my attention that the city cannot lower these speeds without the permission of the legislature; hence, we are asking that this amendment that is being passed out, be added to HB 477 and that Manchester be given the authority, if it desires, to lower the speeds in the service alleys in the city of Manchester. The amendment is now being photocopied. The electronic process is in place. It will be just a moment. Thank you so much. It is really pretty simple and we did...when the amendment comes, that is exactly what it says. It is permissive. We took "shall" out and put "may" in. It therefore doesn't become a 28-a issue. As soon as it is ready, we are ready. Thank you.

**Adopted.**

**HB 477**, establishing certain speed limits.

Senator D'Allesandro offered a floor amendment.

Sen. D'Allesandro, Dist. 20

**May 8, 2003**

**2003-1552s**

**06/09**

**Floor Amendment to HB 477**

Amend the bill by replacing all after section 3 with the following:

4 Speed Limit Established: City of Manchester; Service Alleys. Notwithstanding the provisions of RSA 265:60, II, the speed limit on ways that are service alleys in the city of Manchester may be 10 miles per hour.

5 Effective Date. This act shall take effect upon its passage.

**2003-1552s**

**AMENDED ANALYSIS**

This bill establishes a 55 mile per hour speed limit on New Hampshire Route 9 from one-half mile east of the Stoddard/Nelson town line to the intersection of Route 9 and Apple Hill road in the town of Sullivan. The bill establishes a 45 mile per hour speed limit on Route 9 for one-half mile west of the Route 9 and Apple Hill road intersection. This bill increases the speed limit on New Hampshire Route 114 from north of Henniker to Bradford Village from 50 to 55 miles per hour. The bill also permits a speed limit of 10 miles per hour in service alleys in the city of Manchester.

**SENATOR SAPARETO:** Thank you Mr. President. Mr. President, I am looking at the amendment which says to replace section three with the following, so I am looking at section one and section two which deals with Route 9, and Route 2. My question is, is this the appropriate amendment?

**SENATOR D'ALLESANDRO:** Well it actually...what it should...it should be replacing all after section three. So we are adding section four. Section four says that the speed limit will be established in the alley ways of Manchester. So the original bill is intact as presented. This adds section

four, which deals with the alleyways in the city of Manchester. Section five says that it will be effective immediately upon passage, which is what the prime sponsor desired. I think that should clarify that situation.

SENATOR SAPARETO: Senator D'Allesandro, aren't we also passing section one and section two that goes beyond the scope of Manchester?

SENATOR D'ALLESANDRO: Yes. That was the scope of the original piece of legislation. What this amendment does is, it just adds Manchester to the original piece of legislation, because it was of the same subject matter, and it was a place to put this amendment as permissive legislation. It is not mandatory. It permits the city of Manchester to do it.

SENATOR EATON (In the Chair): House Bill 477 is still intact and this is the floor amendment to add to what is intact there.

SENATOR D'ALLESANDRO: Yes.

**Floor amendment adopted.**

Question is on the adoption of the bill as amended.

**Adopted.**

**Ordered to third reading.**

**HB 228**, relative to conduct after an accident. Insurance Committee. Inexpedient to legislate, Vote 4-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. This is an interesting bill that came through the process that we have here in Concord. By the time that it got to our committee, the sponsors all came in and said to please inexpedient to legislate this bill. It got completely turned around. If this bill were passed the way that it is written, it talks about accidents and death and personal injury. If you hit a car in a parking lot, you don't have to report it. If you hit a tree in somebody's yard and you totaled your car and there is not injury, you don't have to report it. I ask support on inexpedient to legislate. Thank you Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**HB 269-FN**, relative to claims arising from clinical services provided to the department of health and human services. Insurance Committee. Ought to pass, Vote 4-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you Mr. President. I move that HB 269 ought to pass as recommended by the Insurance Committee. This bill was submitted on behalf of the Department of Health and Human Services. Since 1998, the state has contracted with Dartmouth Medical School to provide psychiatrists and other clinicians to treat patients at the New Hampshire State Hospital. Under this contract, the state has agreed to indemnify Dartmouth against any claims that may arise from medical services by covering these claims under RSA 99-D. This bill simply continues this agreement. The committee voted that this bill ought to pass, and I encourage the Senate to comply with this recommendation. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 596-FN**, relative to health plan loss information. Insurance Committee. Rerefer to committee, Vote 4-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. I ask you to support the Insurance Committee and I move that this be recommitted. The Insurance Committee would like to look at this again. I think that the chairman of the committee may be moving too fast to have this rereferred and I ask that it be sent back so that we have another week to work on it. Thank you very much.

**Senator Flanders moved to recommit.**

**Adopted.**

**HB 596-FN is recommitted to committee.**

**HB 770-FN-A**, establishing a committee to study using tax policy to create incentives to encourage employers to hire disabled persons. Insurance Committee. Ought to pass with amendment, Vote 2-0. Senator Prescott for the committee.

**Senate Insurance**

**April 24, 2003**

**2003-1387s**

**09/01**

**Amendment to HB 770-FN-A**

Amend paragraph I of section 2 of the bill by replacing it with the following:

I. The members of the committee shall be as follows:

(a) Five members of the house of representatives, appointed by the speaker of the house.

(b) One member of the senate, appointed by the president of the senate.

SENATOR PRESCOTT: Thank you Mr. President. I move that HB 770 ought to pass with amendment, which was recommended by the Insurance Committee. The committee established that this bill would be responsible for finding ways to increase employment numbers among the disabled in our state through the use of tax incentives for employers. We heard testimony that in the long run, our state is better served when those who are disabled are gainfully employed rather than relying on state assistance programs. If we can help provide opportunities for all of our constituents to have access to more jobs, it's a win-win situation for everyone. For this reason, the committee believes this issue is worth setting up a study committee. We recommend the bill ought to pass with amendment. Thank you Mr. President.

SENATOR BOYCE: I rise in opposition to this bill and the amendment. I am opposed to using...to even suggesting that we use tax policy in order to change some public procedures and processes. This is social engineering using tax policy. I don't think that it is something that we ought to be recommending and therefore, I am not in favor of this bill. Thank you.

SENATOR SAPARETO: Thank you Mr. President. I rise in support of the amendment and the bill. I think that right now tax policy is used in other states and communities, certainly provides incentives and certainly we can say that it is responsible for certain businesses and job creations in other places around New England, if not around the country. That this type of legislation would put us in even par and allow us to compete with other communities to attract new businesses and create new jobs; so therefore, I am strongly in support of this legislation. Thank you.

**Amendment adopted.**



**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 394**, relative to incompatible offices. Internal Affairs Committee. Ought to pass, Vote 2-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I rise to move that we find HB 394 ought to pass. This legislation expands the applicability of the incompatible offices statute. The problem arises when people file for more than one office at a time, knowing full well that they can serve at only one of those positions. The Internal Affairs Committee, having previously passed a similar bill onto the House, also found that this bill went a little bit further and made some other good changes to the statute and so we concurred with that and are asking that this be passed. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 658-FN**, relative to impersonation of candidates. Internal Affairs Committee. Ought to pass, Vote 2-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. All of us can remember what happened maybe, in the election last time. I think that it is an embarrassment to where ever you stood in that election. As a result of our hearing, we had a tape played to us that was taped in New Hampshire, of a person actually saying the name of the candidate, which it was not. Based upon this, we felt that we should pass this legislation to make it a misdemeanor for any person to place a telephone call falsely representing himself or herself as a candidate for office. These calls are usually made around 11 or 12 at night in order to upset the person that is being called. They are sent at inconvenient times. The Attorney General's office reported to us that they had numerous complaints in the last election. The Internal Affairs Committee recommends that this legislation ought to pass and asks for your support. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 745**, relative to voters presenting identification to obtain a ballot. Internal Affairs Committee. Inexpedient to legislate, Vote 2-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move that HB 745 be inexpedient to legislate. This legislation sought to require voters to present identification or sign an affidavit to obtain a ballot. This was an optional process requested primarily by one town and we also found that some changes to the identification requirements are in the Help America Vote Act, which we will be addressing in several bills coming up very soon. For those reasons, we questioned the...we questioned taking this bill forward at this time. Therefore we ask that it be inexpedient to legislate. Thank you.

SENATOR PRESCOTT: Thank you Mr. President. I just rise to show my support to review the Help America Vote Act because I am the sponsor of this bill and want it to be known that I will be looking after that bill...when those bills referring to that act, come forward to do the right thing. Thank you Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**HB 332-FN**, relative to the use of prerecorded telephone messages by candidates and political committees. Interstate Cooperation Committee. Ought to pass with amendment, Vote 4-0. Senator Clegg for the committee.

**Interstate Cooperation**

**April 24, 2003**

**2003-1376s**

**03/01**

**Amendment to HB 332-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to the use of prerecorded telephone messages for political advocacy.

Amend the bill by replacing all after the enacting clause with the following:

1 Definitions; Communication. Amend RSA 664:2, VII to read as follows:

VII. "Communication" shall include, but not be limited to, publication in any newspaper or other periodical, broadcasting on radio, television, or over any public address system, **transmission by telephone**, placement on any billboards, outdoor facilities, window displays, posters, cards, pamphlets, leaflets, flyers, or other circulars, or in any direct mailing.

2 New Subparagraph; Political Advertising; Signature, Identification, and Lack of Authorization; Telephone. Amend RSA 664:14, IV by inserting after subparagraph (b) the following new subparagraph:

(c) Any political advertising in the form of a prerecorded message transmitted by telephone shall, within the first 60 seconds of the message, disclose the name and telephone number of the candidate, committee, or other person paying for the telephone call.

3 New Paragraph; Political Advertising; Signature, Identification, and Lack of Authorization. Amend RSA 664:14 by inserting after paragraph VI the following new paragraph:

VII. Any person who knowingly causes any communication that violates this section to be received within the state of New Hampshire shall be guilty of a misdemeanor if a natural person or shall be guilty of a felony if any other person.

4 Effective Date. This act shall take effect January 1, 2004.

**2003-1376s**

**AMENDED ANALYSIS**

This bill requires that any political advertising in the form of a prerecorded telephone message disclose the name and telephone number of the candidate, committee, or other person paying for the telephone call. This bill also requires that violations of the political advertising identification law meet a knowing standard of conduct for criminal penalties to apply.

**SENATOR CLEGG:** Thank you Mr. President. I move that HB 332 ought to pass with amendment. This bill requires certain identifying information accompany prerecorded political telephone messages and deals with the same subject as SB 215 did. We previously adopted SB 215. The committee amendment merely takes that language and places it instead of what was originally in 332 and sends it back to the House. The Interstate Cooperation Committee asks for your support in the adoption of the amended legislation. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 343**, establishing a boundary commission to determine the boundary between New Hampshire and Maine. Interstate Cooperation Committee. Ought to pass with amendment, Vote 4-0. Senator Johnson for the committee.

**Interstate Cooperation**

**April 24, 2003**

**2003-1377s**

**05/10**

**Amendment to HB 343**

Amend subparagraph I(b) as inserted by section 2 of the bill by replacing it with the following:

(b) Two members of the senate, appointed by the president of the senate.

SENATOR JOHNSON: Thank you Mr. President. I move HB 343 ought to pass with amendment. This legislation establishes a state boundary commission to determine the boundary between the states of New Hampshire and Maine. Legal questions that arise over the waters of the Piscataqua River involve who investigates in the case of a death? Which state responds should a natural disaster strike? Which state's emergency plan goes into effect in the case of a terrorist attack? All of the oil comes into the Port of Portsmouth, yet does the state of Maine have jurisdiction over its protection? And who cleans up in the case of an oil spill? These are just a few of the many questions arising over the continued border dispute between these two states. The Interstate Cooperation Committee recommends that the bill be adopted with amendment and asks for your support. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HCR 5**, urging Congress to permit satellite television subscribers to select in-state broadcast signals. Interstate Cooperation Committee. Ought to pass, Vote 3-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you again, Mr. President. I move HCR 5 ought to pass. House Concurrent Resolution 5 urges Congress to permit satellite television subscribers to select in-state broadcast signals. Under the Direct Market Areas determined in Washington, D.C., Carroll and Coos counties are considered part of the Portland, Maine, viewing area; while Grafton and Sullivan counties have been placed in the viewing areas for Burlington, Vermont. This makes no sense whatsoever. Because of the rural nature of these four counties, many constituents do not have access to cable television and can only obtain satellite television coverage, thus obtaining no New Hampshire television stations. The Interstate Cooperation Committee recommends adoption of this resolution. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**MOTION TO REMOVE FROM THE TABLE**

Senator Barnes moved to have **HB 481** removed from the table.

**Adopted.**

**HB 481**, establishing a committee to study the pricing of milk products.

Senator Barnes offered a floor amendment.

Sen. Barnes, Dist. 17

**April 29, 2003**

**2003-1423s**

**05/03**

**Floor Amendment to HB 481**

Amend the title of the bill by replacing it with the following:

AN ACT establishing a commission to study the pricing of milk products.

Amend the bill by replacing all after the enacting clause with the following:

1 Commission Established. There is established a commission to study the pricing of milk products.

2 Membership and Compensation.

I. The members of the commission shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Two members of the senate, appointed by the president of the senate.

(c) The commissioner of the department of agriculture, markets, and food, or designee.

(d) Three dairy farmers who are residents of New Hampshire, appointed by the New Hampshire Farm Bureau Federation.

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

3 Duties. The commission shall:

I. Identify all factors that contribute to the pricing of milk products.

II. Investigate and report on unfair methods of competition and unfair trade practices in the receiving, purchase, transportation, handling, distribution, or sale of milk or milk products.

III. Solicit information and testimony from New Hampshire dairy farmers and others relative to the pricing of milk products.

4 Chairperson; Quorum. The members of the study commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named house member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Five members of the commission shall constitute a quorum.

5 Report. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2003.

6 Effective Date. This act shall take effect upon its passage.

**2003-1423s**

**AMENDED ANALYSIS**

This bill establishes a commission to study the pricing of milk products.

SENATOR BARNES: Mr. President, I rise to offer a floor amendment and as the amendment is being passed out, I would like to speak to it if

I could. Thank you. Two weeks ago when HB 481 came up, I asked for it to go on the table and I asked you folks to give me a week to put an amendment together and to talk to some people. You were nice enough to do that. This morning I have the amendment and it is being passed out to you. The bill, 481, as it came to us two weeks ago was a study committee. What this amendment does is it turns it into a commission. The reason for turning it into a commission is to allow dairy farmers to be involved in what is going on with this bill, which it is a bill concerning milk products. If you remember as I said two weeks ago as I looked around this room, I didn't see anybody here who I thought knew how to milk a cow, so I think that on something as important as this...maybe there are some...I am sorry...I apologize. Oh my God, they are all jumping up. What this does is to allow our dairy farmers who are impacted by this bill, to have a voice in it. That is my reason for bringing this in. I happened to have a constituent, and I know that some of you do, that are dairy farmers. There aren't too many of them left in this state and I would like to protect the ones that we do have and that is what this will help do, to take care of that. I ask for your support in passing this amendment 1423s.

SENATOR JOHNSON: Senator Barnes, would you agree with me that we should also notify our congressional delegation that we would like to have them see more activity in this area at the federal level?

SENATOR BARNES: Senator Johnson, I couldn't agree with you more. The gentleman who is the constituent that I am talking about lives in Epsom. During the campaign, folks running for the Senate on both sides of the aisle had conversations with him and his comment was that they knew about as much of that situation which I did, which was nothing. So anything that we can do to urge some of the folks down there that are farmers, and I am sure that there are a lot of folks down there that have some background in it. I certainly think that would be proper to help the industry that is having a problem here in New Hampshire. Thank you for your suggestion.

SENATOR PETERSON: Thank you Mr. President. I would just like to compliment Senator Barnes on his work on this and support this amendment. Since the demise in the Northeast Dairy Compact the wholesale price, which milk producers receive, has declined quite sharply, while at the same time, the retail price at the stores has actually risen quite sharply. We are in a situation, in the state of New Hampshire, and in New England, where if the current circumstances continue, we will see the demise of this industry altogether, and local production, and we will be in the position where we are importing the majority, if not the total, of our milk from the Midwest. I do think that it is an important issue and I am glad that Senator Barnes has taken it seriously and given the opportunity for the farmers to have input because we are at a critical stage. Indeed these farms have more to do than simply the lifestyle of the people that are involved, they contribute to the character and the culture of our region and to see them fade into the past, I think, would change the landscape of our state in a way which we would not wish. Thank you Mr. President.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 121**, relative to grounds for modification of a permanent child custody order. Judiciary Committee. Rerefer to committee, Vote 5-0. Senator Sapareto for the committee.

SENATOR SAPARETO: Thank you Mr. President. I move that HB 121 be rereferred to committee. This legislation attempts to change the standard by which the court rules when considering a change in child custody. Parties testified both in opposition and support to these proposals. Because of the complexity of the issues, the Judiciary Committee asks that the bill be rereferred and asks for your support.

**Committee report of rereferred is adopted.**

**HB 123**, relative to notice given to putative fathers in adoption proceedings. Judiciary Committee. Ought to pass with amendment, Vote 3-1. Senator Clegg for the committee.

**Senate Judiciary**

**April 28, 2003**

**2003-1408s**

**05/10**

### **Amendment to HB 123**

Amend the bill by inserting after the enacting clause the following and renumbering the original sections 1-3 to read as 2-4, respectively:

1 Legislative Findings and Intent. The general court finds it necessary at this time to restate and reaffirm the public policy that a putative father who has either been identified by the birth mother or who has, by any of a number of possible means, demonstrated that he wishes to play an active, responsible role in the child's rearing is entitled to notice of a pending adoption of the child.

Amend the bill by replacing section 2 with the following:

2 Adoption; Notice to Person Claiming Paternity and Hearing to Determine Right to Consent. Amend RSA 170-B:5-a to read as follows:

170-B:5-a Notice to Person Claiming Paternity and Hearing to Determine Right to Consent.

***1. In an intrastate or interstate adoption, but not in an international adoption***, the following persons shall be given notice by the court and shall have the right to request a hearing to prove paternity:

(a) A person named by the natural mother in an affidavit:

(1) Filed with the court[-]; ***and***

(2) ***Given prior to or at the time of*** the mother voluntarily relinquishing her rights pursuant to RSA 170-B:8, the mother consenting to an adoption pursuant to RSA 170-B:9, or the mother's parental rights being involuntarily terminated.

(b) The natural or legal father, if his identity is known by the court, the adoption agency which is legal guardian of the child, or the proposed adoptive parents or their attorney, prior to the mother voluntarily relinquishing her rights pursuant to RSA 170-B:8, the mother consenting to an adoption pursuant to RSA 170-B:9, or the mother's parental rights being involuntarily terminated.

(c) A person who claims to be the father and who has filed notice of his claim of paternity with the office of child support enforcement ***in what shall be known as the New Hampshire putative father registry or in the putative father registry of the state where the child was born*** [upon the forms supplied thereby]. ***In an interstate adoption, the petitioner shall provide the court with the address and telephone number of the putative father registry in the state where the child***

*was born. In New Hampshire, the notice form shall be supplied by the office of child support enforcement and* shall indicate the claimant's willingness and intent to support the child to the best of his ability. The notice form may be filed prior to the birth of the child but must be filed prior to the mother's rights being voluntarily relinquished pursuant to RSA 170-B:8, the mother consenting to an adoption pursuant to RSA 170-B:9, or involuntarily terminated. Failure to file the notice prior to this time shall bar the alleged father from thereafter bringing an action to establish his paternity of the child, and shall constitute an abandonment of said child and a waiver of any right to a notice of hearing in any adoption proceeding concerning the child.

(d) A person who is openly living with the child or the child's mother ~~and or~~ providing financial support to the mother or child at the time any action under this chapter is initiated and who is holding himself out to be the child's father prior to the mother voluntarily relinquishing her rights pursuant to RSA 170-B:8, the mother consenting to an adoption pursuant to RSA 170-B:9, or the mother's parental rights being involuntarily terminated.

II. Any person entitled to notice under paragraph I shall be provided 30 days from the date of notice to request a hearing at which he shall have the burden of proving that he is the father of the child. The failure to request such hearing within 30 days from the date of notice shall result in a forfeiture of all parental rights and any right to notice of any adoption proceedings concerning the child.

***III. This section shall be construed broadly in favor of providing a putative father with notice of a pending adoption and an opportunity to request a hearing to prove paternity.***

SENATOR CLEGG: **TAPE CHANGE** Thank you Mr. President. I move HB 123 ought to pass with amendment. This bill reaffirms the rights of birth fathers in adoption proceedings and was filed in response to a New Hampshire Supreme Court ruling. Under the provisions of this legislation, the court would check the putative fathers registry and if there is a match, would notify him of the pending adoption. This notice would allow the father to respond to the court and request a hearing, have a DNA test to prove paternity, and become a party to the proposed adoption. The enactment of this legislation would in no way delay the adoption, but would provide notice to putative fathers in case he wishes to challenge it. The Judiciary Committee recommends that HB 123 be adopted as amended and asks your support. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 153-FN**, relative to grounds for termination of parental rights. Judiciary Committee. Ought to pass, Vote 4-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you Mr. President. I move HB 153 ought to pass. This bill expands the grounds for termination of parental rights to include conviction for murder, manslaughter, attempted murder or attempted manslaughter of the other parent. Nothing in current statute allows the court to terminate parental rights when a spouse has been victimized by the other parent. Even if the grounds are proven to ter-

minate the parental rights of the convicted parent, the court still must consider what is the best interest of the child. The Judiciary Committee recommends the bill ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 180**, relative to proceedings for termination of parental rights. Judiciary Committee. Inexpedient to legislate, Vote 5-0. Senator Sapareto for the committee.

SENATOR SAPARETO: Thank you Mr. President. I move HB 180 inexpedient to legislate. This legislation was filed at the request of the Probate Court in order to provide more judicial economy. However, the court's testimony indicated that the circumstances addressed in this legislation occur rarely. Given that this court resource saving would occur only infrequently, if ever, the Judiciary Committee feels that there is no need to make easier the termination of parental rights under these circumstances and asks your support in defeating this legislation.

**Committee report of inexpedient to legislate is adopted.**

**HB 192**, relative to disposal of controlled drugs in possession of law enforcement officers. Judiciary Committee. Ought to pass, Vote 4-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you Mr. President. I move HB 192 ought to pass. The bill permits the district court to order the destruction of drugs in possession of law enforcement officers following the disposition of a misdemeanor controlled drug offense, but not before the period of the appeal has expired. Law enforcement evidence rooms around the state have these seized drugs stacking up with no way to dispose of them. This legislation allows the departments to go to district court and ask permission to destroy the evidence. The committee recommends the bill be adopted and asks for your support. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 195**, prohibiting all part-time district court judges and district court clerks from practicing law in the district courts. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Sapareto for the committee.

**Senate Judiciary**

**May 1, 2003**

**2003-1470s**

**09/04**

### **Amendment to HB 195**

Amend RSA 502-A:21 as inserted by section 1 of the bill by replacing it with the following:

502-A:21 Disqualifications of Justices[, etc]. No justice, associate justice, special justice or clerk of any district ~~for municipal~~ court shall be retained or employed as attorney in any action, complaint, or proceeding pending in his court or which has been examined or tried therein. No such justice ~~or~~, associate justice, *special justice, or clerk* shall be retained or employed as an attorney in any matter pending before any other district ~~for municipal~~ court *justice*. ~~[No special justice of any municipal or district court shall appear in any municipal or district court representing a client in a criminal case.]~~ No attorney shall be permit-



ted to practice before any district ~~or municipal~~ court where any justice, associate justice, or special justice thereof is associated with said attorney in the practice of law.

SENATOR SAPARETO: Thank you Mr. President. Mr. President, I move HB 195 ought to pass with amendment. Under this legislation, part-time district court judges and district court clerks would be prohibited from practicing law in any district court in New Hampshire. This is already the case within the Probate Court system. While some committee members expressed concern that this could lead to the establishment of a full-time district court judiciary, the House sponsors stated that this is in no way their intent, which is also the belief of the Senate Committee. Given that even the appearance of a conflict is not good within the judiciary, the committee recommends that HB 195 be adopted as amended and asks your support. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 206**, relative to filing of complaints for violation-level offenses. Judiciary Committee. Inexpedient to legislate, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you Mr. President. I move HB 206 inexpedient to legislate. The bill allowed for electronic filing of complaints for violation level offenses; however, SB 40 has already cleared the Senate and is over in the House. Senate Bill 40 being nearly perfect, we felt that there was no need for this piece of legislation and we urge you to support us. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**HB 214**, relative to discovery deposition of minors in criminal cases. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

**Senate Judiciary**

**April 18, 2003**

**2003-1331s**

**09/01**

### **Amendment to HB 214**

Amend RSA 517:13, V as inserted by section 1 of the bill by replacing it with the following:

V. Notwithstanding this section, no party in a criminal case shall take the discovery deposition of a victim ~~[who was 16 years of age or under at the time of the alleged offense or of any witness who was 16 years of age or under at the time of the alleged offense]~~ *or witness who has not achieved the age of 16 years at the time of the deposition.*

**2003-1331s**

### **AMENDED ANALYSIS**

This bill prohibits discovery depositions in criminal cases of victims and witnesses who are under 16 years of age at the time of the deposition.

SENATOR CLEGG: Thank you Mr. President. I move HB 214 ought to pass with amendment. House Bill 214 lowers the minimum age at which a minor may be deposed during discovery in a criminal case. As origi-

nally filed, the bill sought to allow youngsters down to the age of 13 to be deposed. Many opposed this and the House amended the bill to clarify the original intent regarding the age at which a victim may be deposed. This legislation is not intended to prohibit a child from being called as a witness in a trial, but only to limit the depositions that may be taken so that the child is not repeatedly traumatized. The committee amendment changes the noted age in the bill from 17 years to 16 years of age. The Judiciary Committee recommends HB 214 be adopted with amendment and requests your support. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 215**, relative to expungement of records contained in the DNA database. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Sapareto for the committee.

**Senate Judiciary**

**April 22, 2003**

**2003-1357s**

**04/05**

#### **Amendment to HB 215**

Amend RSA 651-C:5, I as inserted by section 1 of the bill by replacing it with the following:

I. A person whose DNA record has been included in the database pursuant to this chapter may request expungement on the grounds that the criminal conviction on which the authority for including such person's DNA record was based has been reversed ~~[and]~~ **or** the case dismissed, ***provided that such person requesting expungement has no other criminal convictions which would require inclusion of his or her record in the database.*** The department shall purge all records and identifiable information in the database pertaining to the person and destroy all samples from the person upon receipt of a written request for expungement pursuant to this section and a certified copy of the court order reversing and dismissing the conviction.

SENATOR SAPARETO: Thank you Mr. President. I move HB 215 ought to pass with amendment. House Bill 215 addresses the same topic as SB 211, which was killed earlier in the session because this bill was coming over to us. The legislation was requested by Administrative Rules in order to clarify the matter of when the Department of Safety must destroy DNA evidence. Under the provisions of this bill, DNA samples will be destroyed only in the cases of those individuals who are totally innocent. The Judiciary Committee recommends that the legislation be adopted as amended. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 487**, relative to protective custody of a person impaired by drugs. Judiciary Committee. Inexpedient to legislate, Vote 5-0. Senator Sapareto for the committee.

SENATOR SAPARETO: Thank you Mr. President. I move HB 487 inexpedient to legislate. The provisions of HB 487 are the same as were contained in SB 36, which I might add is a perfect version of the bill, which has already been passed by the Senate. Therefore, the Judiciary Committee recommends that HB 487 be killed. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**HB 521-FN**, relative to requiring treatment for persons convicted of DWI offenses. Judiciary Committee. Ought to pass, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you Mr. President. I move HB 521 ought to pass. The legislation is the result of two years of study and is directed at persons caught driving while intoxicated. Currently New Hampshire is experiencing a large rise in DWI crashes. A great number of people need treatment. The more quickly someone gets into treatment and there is follow up care, then the recidivism rate can be cut in half. The provisions of HB 521 take a number of important steps in moving those in need into treatment. The Impaired Driver Intervention Program and the Multiple Offender Program are already in existence, thus there is no real fiscal impact. The Judiciary Committee asks your support in the adoption of this legislation. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 659-FN**, relative to penalties for failure to obey a subpoena or summons. Judiciary Committee. Ought to pass, Vote 2-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you Mr. President. I move HB 659-FN ought to pass. House Bill 659 provides that someone who fails to obey a subpoena or summons shall be guilty of a violation and may be ordered to pay costs. The legislation was filed because there are not any teeth to the current law and this adds a couple. A subpoena or summons to appear is issued to people needed in a trial or court proceeding which can be unnecessarily delayed when individuals fail to show. The Judiciary Committee recommends HB 659-FN be adopted. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 461**, establishing a commission to study financial exploitation of the elderly and persons with disabilities. Public Affairs Committee. Ought to pass, Vote 3-0. Senator Roberge for the committee.

**MOTION TO TABLE**

Senator Roberge moved to have **HB 461** laid on the table.

**Adopted.**

**LAIID ON THE TABLE**

**HB 461**, establishing a commission to study financial exploitation of the elderly and persons with disabilities.

**HB 506**, relative to health club membership initiation fees and renewal practices. Public Affairs Committee. Ought to pass, Vote 3-0. Senator Morse for the committee.

SENATOR MORSE: Thank you Mr. President. I move HB 506 ought to pass. This bill makes two changes to RSA 358-I regarding health club

membership initiation fees and renewal practices. Current law does not allow a health club to charge an initiation fee that exceeds 25 percent of a member's annualized monthly fee. House Bill 506 will permit health clubs to charge up to 100 percent of that fee. This change will give health clubs more flexibility to offer their consumers different membership option plans. For example, clubs can charge a higher enrollment fee and lower monthly payments – or – a lower enrollment fee accompanied by higher monthly payments. Consumers are expected to see more options and significant savings as a result of these more flexible membership options. The second change addresses renewal clauses and will allow for health clubs to offer a one-month automatic membership renewal so that an individual's membership will not be automatically terminated at the end of the contract year. The Public Affairs Committee recommends HB 506 ought to pass and asks for your support.

**Adopted.**

**Ordered to third reading.**

**Senator Foster Rule #42 on HB 506.**

**HB 149**, relative to patient rights and disclosures. Public Institutions, Health and Human Services Committee. Inexpedient to legislate, Vote 5-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move inexpedient to legislate on HB 149. Although the intent of HB 149 is meant to provide some piece of mind to a patient should something go wrong during a medical procedure, the legislation is vague on key concepts including the definition of an injury or contributing cause to an injury, and what types of reporting will be required should complications arise hours, days or weeks after the patient leaves the hospital. The committee therefore, unanimously, recommends inexpedient to legislate on HB 149. Thank you Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**HB 196**, establishing a commission to study means to integrate services for people with co-occurring disorders. Public Institutions, Health and Human Services Committee. Inexpedient to legislate, Vote 3-1. Senator Martel for the committee.

SENATOR MARTEL: Thank you Mr. President. I move inexpedient to legislate on HB 196. House Bill 196 proposes to study the connection between drug and alcohol abuse and mental health disorders. Co-occurring disorders is an important subject and one worthy of study, but one that is also germane to a variety of existing statutory in chartered study committees. Rather than create redundancy, the committee believes that these existing studies are better prepared to immediately address the issue and recommends inexpedient to legislate on HB 196. Thank you Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**HB 225**, extending the task force on deafness and hearing loss and changing the task force's membership and duties. Public Institutions, Health and Human Services Committee. Ought to pass, Vote 5-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you Mr. President. I move ought to pass on HB 225. The task force on deafness and hearing loss was originally established to support the development of not for profit organizations to provide information, interpret or referral and other related services. In

order to develop these comprehensive and stand alone community services, the task force requires the additional time to complete its work. The task force will report back on a minimal yearly basis until 2005. The committee unanimously recommends ought to pass on HB 225. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 393**, extending the reporting dates for certain study committees. Public Institutions, Health and Human Services Committee. Ought to pass with amendment, Vote 4-1. Senator Martel for the committee.

**Public Institutions, Health and Human Services**

**April 23, 2003**

**2003-1368s**

**04/05**

### **Amendment to HB 393**

Amend the title of the bill by replacing it with the following:

AN ACT extending the reporting date for the commission to study the relationship between public health and the environment.

Amend the bill by deleting section 1 and renumbering the original sections 2-3 to read as 1-2.

**2003-1368s**

### **AMENDED ANALYSIS**

This bill extends the final report date of the commission to study the relationship between public health and the environment established in 2000, 114 as amended by 2001, 23, from November 1, 2002 to November 1, 2004.

### **MOTION TO TABLE**

Senator Martel move to have **HB 393** laid on the table.

**Adopted.**

### **LAI D ON THE TABLE**

**HB 393**, extending the reporting dates for certain study committees.

**HB 533**, relative to health carrier disclosure for medical child support enforcement. Public Institutions, Health and Human Services Committee. Ought to pass, Vote 5-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you Mr. President. I move ought to pass on HB 533. House Bill 533 authorizes the Department of Health and Human Services to contract and exchange information in centralized medical insurance repository through a bid process. The insurance repository will be charged with identifying and locating available medical coverage in support cases for dependent children being enforced by the department. House Bill 533 will have a positive economic benefit to New Hampshire by reducing public assistance expenditures for medical coverage for dependent children by holding non-custodial parents accountable who are legally responsible for providing medical insurance for their children. The committee unanimously recommends ought to pass on HB 533 and I thank you Mr. President.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 379**, relative to penalties for OHRV violations by underage operators. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Flanders for the committee.

**Senate Transportation**

**May 2, 2003**

**2003-1471s**

**10/09**

**Amendment to HB 379**

Amend RSA 215-A:19, IV(b) as inserted by section 2 of the bill by replacing it with the following:

*(b) Notwithstanding RSA 169-B and RSA 169-D, any minor who violates a provision of this chapter shall not be considered a delinquent or a child in need of services. Any minor who violates a provision of this chapter shall be guilty of a violation and may be punished by a fine for each offense, may have his or her OHRV safety training certification suspended for up to 6 months, and may be required to complete community service or to complete additional OHRV safety training.*

Amend the bill by deleting section 4 and renumbering the original section 5 to read as 4.

**2003-1471s**

**AMENDED ANALYSIS**

This bill allows for operators of OHRVs who are minors to be punished for violation of the OHRV laws. The bill also allows for the liability of the owner of the OHRV if used by a minor in a violation of the OHRV laws. SENATOR FLANDERS: Thank you Mr. President and members of the Senate. You will recall that we recommitted this a week ago for further action. Basically, I move that HB 379 ought to pass as amended. Under current statute, a young man or a young lady under the age of 18 cannot be taken to court and punished for their operation of a OHRV. This bill now allows law enforcement officials to do just that. Once a minor is convicted of a violation, they can be fined, have their OHRV safety training certification suspended for up six months, or required to complete community service or additional OHRV safety training. We feel very strongly that these young people who are traveling on these four wheelers should be treated in a manner of which this bill states. We ask for your support. Thank you very much.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 402**, relative to child passenger restraints. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Martel for the committee.

**Senate Transportation**

**April 25, 2003**

**2003-1395s**

**03/01**

**Amendment to HB 402**

Amend the bill by replacing section 1 with the following:

1 Child Passenger Restraints Required. Amend RSA 265:107-a, I to read as follows:

I. No person shall drive a motor vehicle on any way while carrying as a passenger a person less than 18 years of age unless such person is wearing a seat or safety belt which is properly adjusted and fastened. ~~[or] If the [person] *passenger* is less than [4] 6 years of age and is less than 55 inches in height, [unless such person is] *the passenger shall be*~~ properly fastened and secured by a child passenger restraint which is in accordance with the safety standards approved by the United States Department of Transportation in 49 C.F.R. section 571.213. ***Except as provided in paragraph II,*** no person shall drive a motor vehicle on any way while carrying as a passenger a person less than 18 years of age unless the motor vehicle was designed for and equipped with the passenger restraints specified above.

2003-1395s

#### AMENDED ANALYSIS

This bill makes the child passenger restraint requirement apply to a passenger less than 6 years of age and less than 55 inches in height. The requirement currently applies to persons less than 4 years of age.

SENATOR MARTEL: Thank you Mr. President. I move HB 402 ought to pass. This bill strengthens New Hampshire's Child Passenger Safety Law. Currently, this law only applies to children under four years of age. This bill will make the child passenger restraint requirement apply to children less than six years of age and less than 55 inches of height. Tragically, car accidents are the leading cause of death and injury among children across the nation. Children improperly restrained or left unrestrained risk serious brain, spinal cord, and abdominal injuries. Proper restraints have been found to be the most effective way to reduce injury in a car accident. Booster seats are easy to use and simply lift children up so they fit properly in a seat belt with the belt crossing at the shoulder, not the neck and their lap, fitting low and snug over a child's thighs. They are relatively inexpensive, as adequate high back booster seats cost less than \$40, while a backless booster seat cost less than \$20. In an effort to reach out to low-income families, New Hampshire has been successful in distributing 3,000 car seats and 2,200 booster seats. House Bill 402 is simply good public policy and a sensible step for New Hampshire to take. Please join with me today in supporting HB 402. Thank you Mr. President.

SENATOR SAPARETO: Thank you Mr. President. Senator Martel, as I read this bill, it says that if the person is less than six-years of age "or" is less than 55 inches in height. Does that mean that my four foot short grandmother would have to wear a child restraint system or any adult or any person in this state who is under 55 inches would also be required to sit in a child restraint system as is read here?

SENATOR MARTEL: No. I asked the question of the person who is responsible for identifying the seats, the car seats and the booster seats and she informed me... I asked the question if the muscular skeleton system was much different in a child of that age to an adult or a teenager? She said absolutely and there is no need for the restraints for the people of that age.

SENATOR SAPARETO: Thank you Mr. President. Again, as I am reading this, I see, and it is a very short bill, "no person shall drive a motor vehicle in any way while carrying as a passenger, a person less than 18-years of age unless this person is wearing a seat belt, which is properly

adjusted" and so forth..."or" if the person is less than six years of age "or" is less than 55 inches in height. Perhaps it could be pointed out to me where it would not apply to an adult?

SENATOR MARTEL: I am just looking at the amendment on the bill that is on 402 and the proper language should have said "and" and replaced the "or" on line four, towards the end. Alright, so that precludes the issue. I ask for guidance on this one.

SENATOR BELOW: Thank you Mr. President. We don't need to recommit. The amendment is found on page 14 of today's calendar and it is at the top of the page. I think that it does what needs to be done. If you would look at the amendment on page 14, the committee amendment. This was a topic of discussion and questioning at the hearing, at some length, and it says, I think, clearly, "if the passenger is less than six years of age". Meaning that it is only through age five, and is "less than 55 inches in height, the passenger shall be properly fashioned and secured." Which is not just a child seat, it could be just a booster seat, which is another option. I just wanted to add that I think this is a step in the right direction. It does not reflect best practices, in terms of what is recommended by the professionals. The best practice would be probably less than nine years of age, because up through six, seven and eight, there is also a problem, and that is where the greatest injuries are occurring in car accidents, from children not being properly restrained. But this is a step in the right direction because now we only cover through age three. By covering through age five, hopefully, the habits will be formed and we will make progress. I did just want to say that there is still a concern with kids a little older than age five and less than 55 inches in height, and that the best practice for them would be to continue to use some kind of booster seat until they are 55 inches in height. Thank you.

SENATOR BOYCE: I guess that I will ask Senator Below since he has spoken. Do you have any statistics on how many children between the ages of four and six, in the state of New Hampshire, received injuries or were killed that would have been prevented by being in one of these seats?

SENATOR BELOW: I don't have those with me. We did receive considerable testimony. Some of it was of statistical in nature. I am afraid that I just can't recall that. I don't have my file and I could go get that, but I do recall one particular graph that is very graphic, which was looking at accidents that occur or portions...people who are properly restrained in the car, and it is very high at very young ages, and then it starts to drop. It drops to a very low level through age eight, and then it goes way up high again after age eight because usually kids have grown enough, and they are in a proper seat belt, that they are okay, and they survive injury. So the problem is occurring at age five and four, in New Hampshire particularly, because we don't have any requirement and it continues on until kids grow into regular seat belt systems. But there are cases in New Hampshire of kids being injured from not being properly restrained. When they are in an adult seat belt and they are too small for it, they can be strangled when they are in a car accident, because their shoulder harness might go across their neck for instance. That is not a good thing.

SENATOR BOYCE: Did you actually get any real, actual evidence presented to you that this is actually happening in New Hampshire and that it is a problem that needs to be addressed in New Hampshire? Real actual children being injured in this way?



SENATOR BELOW: I believe that we did. I would need to get my file to site that.

SENATOR BOYCE: Thank you.

SENATOR MORSE: Thank you Mr. President. I believe that Senator Sapareto got his answers.

SENATOR KENNEY: Thank you Mr. President. As the chair of the Transportation Committee, I would just like to reiterate that the original bill had some confusion as far as what the question of six years or under 55 inches in height. That was really, as we thought about it, it was directed toward small people, and there are small people in New Hampshire, but we corrected that with the amendment of six year of age and is less than 55 inches in height. The statistics that we saw were national statistics that suggest that eight and under that there is susceptibility of young children, when it comes to these crashes. That might be the next piece of legislation for down the road, but for this moment in time, our committee felt that if you were six years of age and less than 55 inches in height, that we would be better apt to protect that child inside the car. As the parent of a three and a half year old, I have to say that there was a little bias in having had discussions with my own wife in regard to my young son and looking at other parents who have a child of the same age. It does make sense to have a child in there, a little bit longer. They understand...they as small individuals understand what the importance of what that car seat is. I think that it's really a good piece of legislation and it is headed in the right direction.

SENATOR SAPARETO: Thank you Mr. President. I guess this question is for any member in the committee. Have they considered also, the safety of a child who is required to be in this child safety seat with the introduction of the passenger airbags in some vehicles? The safety of which when these bags deploy, if there is a requirement for guiding the child's seat, are we not placing the children in more danger with the child restrained in a position where the air bag is set to deploy? So I was very concerned about that as I have heard the statistics on injuries resulting from the deployment of these airbags for passengers. I just want to make certain that what we are doing here is going to ensure more safety and not make it more dangerous because of the requirement of the safety seats with cars that are equipped with these air bags. Is there any information regarding that as far as the safety is concerned?

SENATOR KENNEY: Well obviously that is a concern, but I know from, again, my own personal experience, that our child is always in the back seat. He is never in the front seat. That is where the child is going to be protected in the back seat. Now if there happens to be a family that happens to have four or five kids and they have to put one child in the front, then obviously they have to weigh that out as far as that airbag being deployed in case of a crash, but there were no statistics that were brought in directing specifically at the example, in our testimony, but it is a concern for the parent and they have to take that into discretion.

SENATOR SAPARETO: Thank you Mr. President. I guess that this is a would you believe? I have seen an airbag deployed and I have seen it in relation to a car safety seat. I have noticed that with the deployment of the airbag sitting in a shop, that the space between certain safety seats and the airbag does not allow even for very much room at all, certainly could result in the death of a child who is probably 50 inches or so because there is enough room between the airbag and the seat. You know,

my concern is that we may be mandating a more dangerous situation. I tend to defer to parental judgement in this case that would determine whether or not the child's safety is really at risk or not?

SENATOR KENNEY: And I would say that parental judgement says do not have the child in the front seat. That is why I have a sports car... I will not let my child drive in that sports car because he is going to be in the front seat, and if he is in an accident, that airbag would be deployed. So you are right. It is up to the judgement of the parent, but I think that it is common sense that if you have a vehicle and you have one or two children, that they be in the back seat.

SENATOR PETERSON: Thank you Mr. President. Senator Kenney, did the committee hear what other states have gone to this standard? This appears to me to be a bill that is going to require the majority of five-year-olds at least, to be in a child seat until they are six-years-old, no matter what the other circumstance is, riding home with a friend or whatever other circumstance is, coming home from playschool with the soccer mom who picks up a number of kids or so forth. I wonder how many other states have done this? Have there been any issue with if somebody gets into an accident with a circumstance like that and the child is not in the car seat, then they have a greater legal liability and jeopardy, civil liability and so forth, apply to them? Were these things considered?

SENATOR KENNEY: I am not sure, Senator Peterson. Thank you for your question in regard to the civil liability questions of what is going on in other states. I do know that there are...I believe that it was 12 to 14 states that are looking at or have these similar laws in place when it comes to this particular age group, when it comes to the six and under, but as far as the actual penalty of what goes on in other states, in case a child is not in their car seat and abiding by there law, I am not aware of that, and that did not come up in testimony.

SENATOR LARSEN: While I wasn't at the hearing, I have spent many years putting children into booster seats and I don't believe that there is a question in fact, that they improve safety. The hearing report shows brain, spinal and abdominal injuries are the result of children who are improperly restrained or not restrained in a vehicle. Child safety seats reduce the risk and death in passenger cars by 70 percent for infants and 55 percent for toddlers age one through four. Children over age four are considered forgotten children and sometimes simply use the lap or shoulder belts that are designed for adults weighing over 150 pounds or approximately 150 pounds. So all the evidence is in fact, that the safety of a young toddler seat, a booster seat, is improved with their use. There are 15 other states with similar legislation, according to the NCSL. This bill was promoted by such diverse groups as the Injury Prevention Center and Save Kids. Peter Thomson of the Highway Safety Association, AAA, State Farm and the Brain Injury Association. I think given all of this data, it is good public policy to promote additional child safety through passage of this bill.

SENATOR BARNES: Thank you Mr. President. I just want to say that in my opinion this is a common sense bill and I would like to move the question.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

SENATOR BOYCE: Thank you Mr. President. I rise in opposition to this bill. I just heard that this is you know, to encourage...that maybe this

is encouraging the use of these restraints or you know.. it seems to me that this is a feel-good thing. Parents that are concerned about their kids will do what is right for their kids. If that is a seat belt, that is what they will do. If it is a seat restraint, that is what they will do. I don't believe it is the New Hampshire way to coerce people by...and I see that recently the court has said that they think that the fine for a first offense on this statute should be \$150 and, I think, \$250 for a second offense. So this is not persuading somebody to do the right thing. This is coercing them. This is taking a big baseball bat and hanging it in front of their face and saying "Do this or we are going to smack you around with it." This is not the way that we are supposed to do things in this state. This is not the way to do it. If we want people to use these safety seats...I think that it is interesting that Mr. Thomson, who heads up the state Safety Agency is in favor of this because his agency was created because this state said no to the feds on the requirement of seat belts and helmets. Because we told them no on that, they said that they were going to take some of our money from the highway fund and put it into this safety agency and he is the head of it, so now he is in favor of something that is directly opposed to what it was that got his agency started. I am...this is not the way that we should do things. I think that we should let the parents decide what they should be doing. We shouldn't hold this penalty of \$250 that the court wants to put on this, over their heads, for using something that they ought to have the responsibility to decide for themselves. I don't believe that we have a major problem in this area in this state. I think that most parents do use some kind of restraint when it is required and when it is needed, but I don't think that we need to be doing it this way. Thank you.

SENATOR BARNES: Senator Boyce, I heard testimony from Senator Larsen, a whole list of groups that are in support of this. One of them was the Brain Injury Group. My understanding over the years is that you are a member of that group. So did you use this same argument on them before they voted to pass this on?

SENATOR BOYCE: Yes, I am. I was President of the Brain Injury Association and while I was President of the Brain Injury Association, I opposed their coming to this legislative body and asking for seat belt legislation, mandatory seat belt use and helmet use. I opposed those bills for the same reason that I oppose this bill. The people of the state should use their own responsibility and common sense to do what is right and we don't need to legislate that.

SENATOR BARNES: Would you believe that if we used that argument that you used, that we wouldn't have to be sitting here and making 99 percent of the laws that we passed? Common sense are two words that if we could only use those, we wouldn't have to worry about any laws would we?

SENATOR BOYCE: And I vote against a lot of bills because we don't need to be doing that. Thank you.

SENATOR BELOW: Thank you Mr. President. Just for the record, I just happen to have a copy of the testimony that the Brain Injury Association of New Hampshire gave before the House Transportation Committee, and I think that it is interesting to cite a couple of the points that they made. "Each year approximately 4,000 individuals incur brain injury in our state, here in New Hampshire." That association represents over 2,000 families whose children have suffered traumatic brain injury.

It is the number one public health issue for children and teens. TBI kills, disables and hospitalizes more young people than any other cause, including cancer, heart disease, AIDS, drug and alcohol abuse **TAPE CHANGE** and they also point out some data from the National Center for Injury Prevention and Control. That of children 0 to 12 years who are killed in motor vehicle crashes, during 1999 and 2000, 52 percent were unrestrained. Completely unrestrained, 18 percent were incorrectly restrained, and 35 percent were riding in the front seat. So that it is an important concern with the front seat. And that fewer than 10 percent of five to eight year olds used booster seats, the recommended safety seat for this age group. Booster seats, just a few dollars at a department store, that just raises them up so that the harness and seat belt go across them in the right place. Finally, they concluded that "this proposed law is good public policy for the prevention of brain injury for children". They point out that the National Highway Traffic Administration recommends booster seats for children over 40 pounds, until at least age eight. So we are just taking a step into that direction of requiring that practice through age five. It is true that it is a requirement, but it is something that if we don't prevent it, we end up paying the cost. We see this in our budget. The Brain Injury Requirement to increase appropriations in that area for Medicaid. Thank you.

**SENATOR FLANDERS:** Thank you Mr. President and members of the Senate. Very briefly. Would you believe that my experience in 40 years in the Insurance business is that our rehab hospitals, in this state and across the country are full of people who did not use common sense?

**Question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Below.**

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Below, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Estabrook, Morse, Prescott, Cohen.**

**The following Senators voted No: Boyce.**

**Yeas: 22 - Nays: 1**

**Adopted.**

**Ordered to third reading.**

**Recess.**

**Out of recess.**

**HB 497, relative to inactive status licenses. Transportation Committee. Ought to pass, Vote 4-0. Senator Flanders for the committee.**

**SENATOR FLANDERS:** Thank you Mr. President. It is interesting. We broke from lunch and we were talking about youngsters and seat belts and so forth. Now we are talking about the older generation I presume, because I am the oldest in Transportation, that is why I am bringing this bill out. The history in New Hampshire is that if a person, and I am going to use an older person, does not pass the driving test three times, their license is revoked or suspended. What happens once the license is revoked is that they cannot under any circumstance, drive. The Department of Safety has asked us to pass this bill, which would make their license inactive. I did not know this until testimony, but there are schools

in the state, and one happens to be Crotched Mountain, and there is one in Exeter, that will take these people who fail the test, maybe for their eyes or for their health reasons, they will take them in and they will re-educate them on driving. With this inactive license they can take drivers test and get ready to go back and take the test. So basically, the Department of Safety has asked us to pass this so that they have the authority to make a license inactive on people who fail a training test. We think that this is a good bill and we ask for your support. Thank you.

SENATOR JOHNSON: Senator Flanders, in an inactive license, do they have to continue to pay for it if it is inactive?

SENATOR FLANDERS: It would be a short period of time. In other words, you failed your license and you would automatically go to one of these schools. I presume, that when it was time for renewal, if you hadn't passed that test, you wouldn't get renewed.

SENATOR JOHNSON: Okay. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 560**, relative to penalties for operating an aircraft while under the influence of alcohol or drugs and making a technical correction. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Flanders for the committee.

### **Senate Transportation**

**April 17, 2003**

**2003-1324s**

**09/10**

### **Amendment to HB 560**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to penalties for operating an aircraft while under the influence of alcohol or drugs, relative to fees related to aircraft, and making a technical correction.

Amend the bill by replacing all after the enacting clause with the following:

1 Prohibitions. Amend RSA 422:28, XII to read as follows:

XII. For any person to enter the grounds of an airport posted against such entry in accordance with RSA [635:4] **635** without the express consent of the airport manager.

2 New Section; Implied Consent of Operator of Aircraft to Submit to Testing to Determine Alcohol Concentration. Amend RSA 422 by inserting after section 28 the following new section:

422:28-a Implied Consent of Operator of Aircraft to Submit to Testing to Determine Alcohol Concentration. Any person who operates or attempts to operate an aircraft on the ground, on the public waters, or in the air in this state shall be deemed to have given consent to physical tests and examinations for the purpose of determining whether the person is under the influence of intoxicating liquor or controlled drugs, and to a chemical, infrared molecular absorption or gas chromatograph test or tests of any or all of any combination of the following: blood, urine, or breath for the purpose of determining the controlled drug content of the person's blood or alcohol concentration if arrested for any offense arising out of acts alleged to have been committed while the person was operating, attempting to operate, or in actual physical control of an aircraft while under the

influence of intoxicating liquor or controlled drugs or while having an alcohol concentration of 0.04 or more. The test or tests shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been operating, attempting to operate, or in actual physical control of an aircraft in this state while under the influence of intoxicating liquor or controlled drugs or while having an alcohol concentration of 0.04 or more. A copy of the report of any such test shall be furnished by the law enforcement agency to the person tested within 48 hours of receipt of the report by the agency by certified mail directed to the address shown on identification furnished by the person. Results of a test of the breath shall be furnished immediately in writing to the person tested by the law enforcement officer conducting the test.

3 Penalties. Amend RSA 422:29, VI to read as follows:

VI. Any person who operates *or attempts to operate an aircraft* while under the influence of intoxicating liquor or of any controlled drug as prohibited by this chapter or 14 C.F.R. ~~[section 91-11]~~ **Part 91** as amended shall be guilty of a class B felony *and be subject to the same penalties as a person convicted of a violation of RSA 265:82 as specified in RSA 265:82-b, I(c). Any conviction under this section shall be reported to the department of safety, division of motor vehicles and shall become a part of the motor vehicle driving record of the person convicted.*

4 Aviation Users Advisory Board, Membership. Amend the introductory paragraph of RSA 21-L:8, I to read as follows:

I. There shall be an aviation users advisory board consisting of 7 members. All members, except the members set forth in subparagraphs (c), (d), and (g), shall hold a valid pilot's certificate at the time of appointment. The members shall be appointed by the governor, with the consent of the council, and shall include the following:

5 New Paragraphs; Fee for Certified Copies and Replacement of Lost Decal. Refund of Overpayments. Amend RSA 422:31 by inserting after paragraph VII the following new paragraphs:

VIII. The division may issue a certified copy of any certificate of registration or registration decal which may have been lost or mutilated, upon the written request of the person entitled to the certified copy and the payment of a fee of \$10.

IX. If any person tenders a payment to the division in excess of the sum lawfully due, and the overpayment is less than \$5, the department may, in its discretion, disregard the overpayment if the cost to the state to refund the overpayment would exceed the amount involved.

6 New Paragraph; Public Aircraft Exempted From Registration Fee. Amend RSA 422:32 by inserting after paragraph IV the following new paragraph:

V. A fee for the registration of public aircraft.

7 Effective Date.

I. Sections 2 and 3 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect upon its passage.

2003-1324s

#### AMENDED ANALYSIS

This bill establishes implied consent to alcohol concentration testing and penalties for persons who operate or attempt to operate aircraft while under the influence of alcohol or controlled drugs. The bill also makes a technical correction to the prohibitions provision of the New Hampshire Aeronautics Act.

The bill also exempts public aircraft from registration fees and imposes a fee for a certified copy of an aircraft certificate of registration or registration decal.

**SENATOR FLANDERS:** Thank you Mr. President and members of the Senate. I am in an area now that I am not as familiar with as I am with snowmobiles and four-wheelers. We are now in airplanes and I do not have one and only fly with the commercials. This bill extends the implied consent law to those who operate or attempt to operate an aircraft while intoxicated or under the influence of controlled drugs. It allows for a conviction for this act to be considered on the motor vehicle record of any pilot. House Bill 560 also treats operating an aircraft under the influence with the other off-road vehicles such as boats and OHRV's. The technical correction is it removes the requirement that the airport manager be a member or be a pilot. Many of our airports now are, it is like every other business, the bean counters have come in and taken over the insurance industry and probably the airports, so the technical correction basically says that you don't have to be a pilot to be an airport manager. I thank you all for not asking me why and how they are going to pull the plane over to check for DWI. Thank you.

**SENATOR BARNES:** How are they going to pull them over and check?

**SENATOR FLANDERS:** I don't think it is a problem of pulling them over and checking them, Senator, it is the yellow line that is going to be the problem.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 561**, repealing the Uniform Aircraft Financial Responsibility Act. Transportation Committee. Ought to pass, Vote 3-0. Senator Flanders for the committee.

**SENATOR FLANDERS:** Thank you Mr. President and members of the Senate. Again we are in aircrafts. The testimony that we heard was that when this Uniform Aircraft Financial Responsibility Act was passed, we thought that it was going to do certain things that it does not do. The example would be that the department would like to see this Act repealed because they feel that the law doesn't discourage unsafe flight, the penalties are ineffective and there are significant gaps in the law which it actually covers. For example, under the law now, and airman can lose their ability to register an aircraft but there's nothing to stop them from registering the aircraft in the name of a corporation, trust, or partnership. In relation to the gaps in coverage, the law doesn't cover student pilots, rental aircraft, or aircraft while on the ground. As a practical matter, the act simply does not meet its intended goals and doesn't protect New Hampshire citizens from the damages that can result from the misuse of aircraft. If HB 561 passes and the act is repealed, New Hampshire's policy will be more in-line with the vast majority of the other states in our nation. I move that HB 561 ought to pass and ask for your support. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 661-FN-L**, relative to Westport Village Road in the town of Swanze. Transportation Committee. Ought to pass, Vote 5-0. Senator Martel for the committee.

**SENATOR MARTEL:** Thank you Mr. President. I move HB 661 ought to pass. This bill reclassifies Westport Village Road as a class V highway in the town of Swanze from Homestead Avenue to New Hampshire Route 10. The reclassification will transfer ownership and responsibility for maintenance to the town of Swanze. The Department of Transportation is happy to pay for the initial upgrade of the road because in the long run, it will save the state money on the road's repair and maintenance. This transfer of ownership was part of a deal Swanze worked out with the Department to get assistance through the Bridge Aid Program to repair one of their covered bridges that had been burned down by arson. The Transportation Committee recommends HB 661 ought to pass and I ask for your support. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 699-FN**, relative to abandoned vehicles. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Kenney for the committee.

**Senate Transportation**

**May 2, 2003**

**2003-1475s**

**03/04**

#### **Amendment to HB 699-FN**

Amend the bill by replacing section 3 with the following:

3 Effective Date. This act shall take effect 60 days after its passage.

**SENATOR KENNEY:** Thank you Mr. President. This is the bill that everyone's been waiting for. I move HB 699 ought to pass with amendment. This bill addresses the growing problem of abandoned cars in New Hampshire's cities and towns. It's not uncommon for an individual to pull off their vehicle's plates and leave it on the highway, in a mall or church parking lot, or even on a piece of farmland. These cars are eyesores and safety hazards. As the law stands, towing operators are being unduly penalized when responding to law enforcement's requests to remove abandoned cars. Once they pick up the car, these companies are left with the cost of keeping the vehicle or properly disposing of it. The responsibility for the abandoned vehicles should be directed to those who abandon them not those who tow them. House Bill 699 takes New Hampshire closer to an equitable solution for all parties concerned. It allows the person storing the abandoned vehicle to remove items from a vehicle and hold them pending payment of fees due. It also requires the suspension of the driver's license of any person failing to pay court-ordered costs of abandoning a vehicle. The Transportation Committee recommends a motion of ought to pass with amendment and asks for your support. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**



**HB 711-FN**, relative to the regulation of retail installment sales of motor vehicles. Transportation Committee. Ought to pass with amendment, Vote 4-0. Senator Kenney for the committee.

**Senate Transportation**

**April 25, 2003**

**2003-1394s**

06/01

**Amendment to HB 711-FN**

Amend RSA 361-A:2-b, I(c) as inserted by section 5 of the bill by replacing it with the following:

*(c) In lieu of the requirements of subparagraph (b), licensees may submit copies of their most recent Securities and Exchange Commission 10K and 10Q statements.*

Amend the bill by replacing section 15 with the following:

15 Repeal. The following are hereby repealed:

I. RSA 361-A:1, XIV, relative to the definition of commissioner.

II. RSA 361-A:11, II, relative to an additional penalty for engaging in the business of a retail seller or sales finance company without a license.

SENATOR KENNEY: Thank you Mr. President. I move HB 711 ought to pass. This bill makes various changes to the laws regarding retail installment sales of motor vehicles. These changes are expected to make doing business in New Hampshire easier. To mention a few of these revisions, HB 711 defines a branch and a principal office in RSA 361-A:1, changes the requirements for a surety bond, adjusts filing and expiration dates, and significantly increases penalty provisions. House Bill 711 was sponsored at the request of the Banking Department and the Transportation Committee recommends HB 711 ought to pass and asks for your support. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 819**, relative to original and youth operators' licenses. Transportation Committee. Ought to pass, Vote 4-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. I think that it is a shame that we have to pass this bill, but I think that it is an important bill. This is a bill that is going to change the appearance of a license on anybody under 21 years of age. What we have been asked to do by the Department of Safety is, when the original license is issued to anyone under 21 years old, the license will be up and down. When they turn 21, when they renew their license, it will be like ours across. Mainly this is for the purchase of alcohol because people are having trouble deciding or subtracting the date. We feel that this is an effective thing to do.

SENATOR BARNES: Thank you. Senator Flanders, I think that it is a great idea, but I just got a but...there...our license is now fit for five years?

SENATOR FLANDERS: Four.

SENATOR BARNES: So if I am 20 years old and get my license, I am stuck with that funny license for four more years?

SENATOR FLANDERS: You will get this one, a five year license. It will expire at age 21.

SENATOR BARNES: I am 20 and I go in and get my new license.

SENATOR FLANDERS: You will not get a five year license, you get a one year license.

SENATOR BARNES: Okay. So when I become 21, I will get the good license?

SENATOR FLANDERS: Everybody over 21 will have a horizontal license and everybody under 21 will have a different direction one.

SENATOR BARNES: Is it going to cost me again to get that license?

SENATOR FLANDERS: At 21 yes. It is like anybody that is going to renew.

SENATOR BARNES: There is only a one-year deal. Okay. Thank you.

### PARLIAMENTARY INQUIRY

SENATOR BOYCE: Mr. President. I have a parliamentary inquiry.

SENATOR EATON (In the Chair): Parliamentary inquiry.

SENATOR BOYCE: If I wanted to bring in a floor amendment to this bill, and know that it won't be ready until at least next week, would it be appropriate at this time to ask this to be tabled?

SENATOR EATON (In the Chair): That would be appropriate if that is what you wish.

SENATOR SAPARETO: Mr. President, would it be possible at all to find out the nature, possibly to determine if the tabling motion is appropriate at this time for the members?

SENATOR EATON (In the Chair): Well, seeing that we don't have a tabling motion, it is still open for discussion.

SENATOR SAPARETO: Senator Boyce, what is the nature of your amendment?

SENATOR BOYCE: I just had someone who had approached me with something they wanted to be able to do and it applies to youthful driver licenses. It really has nothing to do with the content of this bill, but only with the section of the RSA. I want to see if I can get something drafted that will fit into that section of the RSA to do that. This is just a vehicle, rather than to wait until next year to do this.

### MOTION TO TABLE

Senator Clegg moved to have **HB 819** laid on the table.

**Adopted.**

### LAIID ON THE TABLE

**HB 819**, relative to original and youth operators' licenses.

**HB 828-FN-A-L**, establishing a committee to study the effect of alternative transportation on state revenues. Transportation Committee. Inexpedient to legislate, Vote 3-1. Senator Martel for the committee.

SENATOR MARTEL: Thank you Mr. President. I move **HB 828** inexpedient to legislate. This bill would create a study committee to look at the effect alternative fuel and hybrid vehicles will have on future state revenues. At this point in time, we do not feel that there is a significant need to study this issue in-depth. There are only a handful of these cars on

the market now and the Energy information Administration expects that hybrids and alternative fuel cars will only makeup one-tenth of the vehicle market in the year 2020. With that, the Administration also expects to see a corresponding increase in the sale of gasoline and diesel, not a decrease in sales. These statistics alone, suggest that New Hampshire will not see any dramatic changes in their revenue stream. If in the next few years we see a more aggressive move toward the use of alternative fuel vehicles, we can reconsider a study committee at that time. But for now, let's focus on some of the more time-sensitive issues. I move HB 828 inexpedient to legislate and I thank you Mr. President.

**SENATOR BELOW:** Thank you Mr. President. I just felt that the committee also was to have the duty to examine the possibility of encouraging alternative fuel vehicles and hybrid vehicles, and I was the one vote in opposition to inexpedient to legislate. I didn't see the harm in creating the study and suggest that we amend the bill to make it simply House members if Senate members weren't interested in it. I suppose that they can do that without a bill, but I don't see the point in inexpedient to legislate it. I think that it would be better to amend it and allow House members to have an official study of this issue. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**HB 515**, excluding certain agreements between fish and game licensees and landowners from the right-to-know law. Wildlife and Recreation Committee. Ought to pass, Vote 3-0. Senator Sapareto for the committee.

**SENATOR SAPARETO:** Thank you Mr. President. Mr. President, I move HB 515 ought to pass. This bill provides that all records kept by the Department of Fish and Game regarding arrangements between a private landowner and a Fish and Game license holder be maintained confidential and not considered a public record under the right-to-know law. This bill came in response to a chain of events that began last year when the Fish and Game Department received a request under the right-to-know law for landowner information. The Attorney General's Office deemed the information to be public information because it was filed through conservation officers. Prior to releasing the records, Fish and Game sent each landowner a letter notifying them of the request and subsequent release. In response, the Department received a number of complaints from angered landowners upset that their personal information could be given out to anyone. House Bill 515 attempts to address these concerns and protect the rights and wishes of landowners that open up their property for Fish and Game related activities. It also ensures that a number of hunters and trappers will have continued access to help manage New Hampshire's wildlife. This involved an agreement, a private agreement, between a landowner and someone who wishes to hunt on their property. Just that relation. The Wildlife Committee recommends HB 515 ought to pass and asks for your support. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 529**, relative to the New Hampshire seed law. Wildlife and Recreation Committee. Ought to pass, Vote 2-0. Senator Cohen for the committee.

**SENATOR COHEN:** Thank you Mr. President. This bill incorporates...vote yes.

**Adopted.**

**Ordered to third reading.**

**HB 690-FN**, relative to agricultural crop damage. Wildlife and Recreation Committee. Ought to pass with amendment, Vote 4-0. Senator Cohen for the committee.

**Wildlife and Recreation**

**April 23, 2003**

**2003-1367s**

**08/01**

**Amendment to HB 690-FN**

Amend the title of the bill by replacing it with the following:

AN ACT relative to agricultural vandalism.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Agricultural Vandalism; Penalties. Amend RSA 539 by inserting after section 8 the following new section:

539:9 Agricultural Vandalism; Penalties.

I. Whoever shall knowingly cut, fell, destroy, injure, damage, cause to be damaged, carry away, tamper with, worry, or vandalize any legal crop or legal crop bearing tree or plant, cropland, pasture, or pasture land livestock or other farm raised animals, as defined in RSA 21:34-a, and all farm buildings, enclosures, structures, or equipment used in the care and production of crops, livestock or other farm raised animals or aid in such action without permission of the owner, shall forfeit to the person injured up to 10 times the market value or repair cost.

II. A person who violates the provisions of paragraph I shall also be guilty of a class B felony if the actual loss or cost of repair is \$10,000 or more, or a misdemeanor if the actual loss or cost of repair is less than \$10,000.

2 Effective Date. This act shall take effect January 1, 2004.

SENATOR FLANDERS: Mr. President, to save the Senator from the coast, I move that we table.

**MOTION TO TABLE**

Senator Flanders moved to have **HB 690-FN** laid on the table.

**Adopted.**

**LAID ON THE TABLE**

**HB 690-FN**, relative to agricultural crop damage.

**HB 766**, relative to the information required for a license to carry a pistol or revolver. Wildlife and Recreation Committee. Ought to pass, Vote 4-0. Senator Sapareto for the committee.

SENATOR SAPARETO: Thank you Mr. President. Mr. President, I move HB 766 ought to pass. This bill simply clarifies existing law regarding the application process for a license to carry a pistol or revolver. As the law is written, RSA 159:6 does not specify that the taking of fingerprints and/or photographs is a part of the application process and is illegal. As a result, some New Hampshire towns have taken it upon themselves to alter this process and request applicants to submit additional information. House Bill 766 intends to prevent misinterpretation of the law and standardize the application process by clearly stating that "no photograph or fingerprint shall be required

or used as a basis to grant, deny, or renew a license to carry for a resident or nonresident, unless requested by the applicant." The Wildlife Committee recommends HB 766 ought to pass and asks for your support. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 768**, establishing a committee to study the flow in the Connecticut River and the effect of the flow on water levels in Lake Francis and the Connecticut Lakes, and to study the use of certain state-owned property along the Baker River. Wildlife and Recreation Committee. Ought to pass with amendment, Vote 3-0. Senator Roberge for the committee.

**Wildlife and Recreation**

**April 30, 2003**

**2003-1459s**

**06/01**

### **Amendment to HB 768**

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study the flow in the Connecticut River and the effect of the flow on water levels in Lake Francis and the Connecticut Lakes.

Amend the bill by replacing section 1 with the following:

1 Committee Established. There is established a committee to study the flow in the Connecticut River and the effect of the flow on water levels in Lake Francis and the Connecticut Lakes.

Amend the bill by replacing section 3 with the following:

3 Duties. The committee shall study the flow in the Connecticut River, its effect on Lake Francis and the Connecticut Lakes, and its effect on the dams that generate power from the flow in the river. The committee shall develop a recommendation for the minimum water level to be maintained at the Murphy Dam on Lake Francis to balance the competing needs of conservation, recreation, agriculture, and power production.

**2003-1459s**

### **AMENDED ANALYSIS**

This bill establishes a committee to study the flow in the Connecticut River and the effect of the flow on water levels in Lake Francis and the Connecticut Lakes.

SENATOR ROBERGE: Thank you Mr. President. I move HB 768 ought to pass as amended. This bill establishes a committee to study the flow of the Connecticut River and its subsequent effects on the water levels of Lake Francis and the Connecticut Lakes. The committee will also develop recommendations to improve the balance of the competing needs of conservation, recreation, agriculture, and power production in the upper Connecticut River watershed. House Bill 768 was amended in committee at the request of the Department of Fish and Game and New Hampshire Wildlife Federation to remove the study of a parcel of property on the Baker River Watershed. The House originally amended HB 768 in efforts to combine two separate study committees into one. However, the Wildlife Committee does not see the need to study the Baker River Watershed at this point. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 808**, relative to proof of residency and resident tax payment for receiving resident fish and game licenses. Wildlife and Recreation Committee. Ought to pass, Vote 3-0. Senator Sapareto for the committee.

**SENATOR SAPARETO:** Thank you Mr. President. I move HB 808 ought to pass. This bill states that an individual must present a valid New Hampshire's driver's license or a New Hampshire non-driver's picture ID card to procure a resident Fish and Game license. If the individual is under 18, their parent or guardian must be a resident of the state. Current law requires you to present a resident tax receipt to obtain a Fish and Game license. The bill also amends the subdivision heading of RSA 207:14 to read "Import, Possession, or Release of Wildlife" as this heading better reflects what is currently in that statute. The Wildlife Committee recommends a motion of ought to pass and asks for your support. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 811**, relative to limiting the liability of manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from misuse. Wildlife and Recreation Committee. Ought to pass, Vote 3-0. Senator Sapareto for the committee.

**SENATOR SAPARETO:** Thank you Mr. President. I move HB 811 ought to pass. This bill limits the liability of manufacturers, distributors, dealers, and importers of firearms or ammunition for damages caused from misuse of their products. It does however preserve an individual's right to sue on conventional grounds for a defective product. Since October of 1998 lawsuits against the firearms industry have become increasingly prevalent across the nation. Thirty-four municipalities, various public interest groups, and private individuals have sued members of the industry in an attempt to place blame on the manufacturer or seller for another's action. As a result, companies like Savage Arms have spent \$350,000 in defense of lawsuits and New Hampshire based Sigarms has seen their insurance costs increase over \$200,000 this year. If you think about it, I mean, you wouldn't sue someone who is driving a vehicle and hit a relative when they were walking. Why would you sue a manufacturer for a product used in criminal activity? You wouldn't. In other words, you've got...we want to go after...we want to keep perpetuating liability. In this case, we are still preserving the right to sue any manufacturer as in any defective product for any damages caused; however, we are not going after a manufacturer of a lawful product, any product, for misuse or criminal action. The Wildlife and Recreation Committee recommends HB 811 by a unanimous three to zero vote and ought to pass. Thank you. Senator Flanders offered a floor amendment.

Sen. Flanders, Dist. 7

**May 8, 2003**  
**2003-1545s**  
**04/10**

**Floor Amendment to HB 811**

Amend RSA 508:21, I(c) as inserted by section 2 of the bill by replacing it with the following:

(c) "Qualified product" means a firearm or ammunition or a component part of a firearm or ammunition, or a target launcher manufactured in compliance with federal and state law, that has been shipped or transported in intrastate, interstate, or foreign commerce.

SENATOR FLANDERS: Thank you Mr. President. I rise to offer a floor amendment. All that I am doing in "c" is adding the words "target launcher." This is not something in the military. It sounds like it is, but basically it is the machine that throws the clay pigeons. These are manufactured in New Hampshire, and we are just adding that in with the original bill. Thank you.

**Floor amendment adopted.**

SENATOR BELOW: Senator Sapareto, the distinguished Senator from Derry, I see that the main purpose of this bill is to preserve, is stated to preserve a citizens access to a supply of firearms and ammunition for all lawful purposes and so forth. Has there been any incidents of manufacturer or distributor being put out of business by a lawsuit, civil liability lawsuit?

SENATOR SAPARETO: Thank you Senator for the question. Not yet.

SENATOR BELOW: I rise in opposition to the passage of HB 811. It sets an unusual and I think dangerous precedent, and a constitutionally questionable precedent of exempting a whole industry, providing exclusive immunity from civil action. In a range of areas that there may be negligence and culpability and responsibility, for which there is a need for accountability. Let me give you an analogy that I think might help you think about this in terms of what kind of policy it is in terms of industry. With that regard to the question of this being the gun industry, because I certainly support the constitutional right to bear arms and obviously that right to bear arms means that there has to be a supply that you can purchase the arms and ammunition. I don't have a problem with that notion. The problem that I have with...is for instance, say we had a pharmaceutical company and they had a distribution network. The pharmaceutical company made a drug that in a prescription situation, was an appropriate medication. But, in a black market situation, in an illicit use situation, it could be fatal. Let's say that your child died because they consume that drug, bought through the illegal black market. In doing that, the parent questioned where, how come my child got this drug? What if they found out that the company, a large portion of their drug, maybe a quarter of their whole manufacturing operation was going into the black market, and the company executives knew that their drug was being sold on the black market, and that their distributor was getting it into the black market by skirting the law. Maybe those executives were told that there is a simple way to prevent their drug from getting into the black market, if they changed their distribution system. If they didn't sell to the distributor that was directing the drug into the black market. But they chose to ignore that because they were profiteering from the sale of this drug in a black market that was causing our children to die. Wouldn't we be concerned that the company be responsible and accountable if they were willfully, negligently, culpable in profiteering from the sale of their product into an illegal black market? Well that is an allegation that has been made about the gun industry. It is not a pleasant one. It is not one that I can conclude is correct or incorrect. That is what we have courts for. But it is an allegation that has been in some of these lawsuits. I think that we are seeing this legisla-

tion here and at the national level, and in other states, to shut down these kinds of lawsuits. Not because they are frivolous, because none of them have been dismissed as frivolous, but because the industry is scared that they will be held accountable and because industry executives, people who have worked in this industry, lobby for this industry, have come out and said, the industry is wrong. The industry is culpable. The industry is knowingly distributing in such a way that they profit and profiteer from sales, from illegal sales into the criminal market. I need to take off my jacket, I am getting warmed up here. I think that this is a big issue, so I have to talk about it for a few minutes. You are going to see it become a real big issue soon. Sixty minutes is featuring the "Big Whistle Blower" this Sunday evening. A guy by the name of Bob Ricker who had a career of lobbying and working for the industry. He started out of law school working for the National Rifle Association. His success in that area, he was assigned to California where he worked on behalf of the NRA, Gun Owners of California, Gun Industry Folks in California, the Citizens Committee for the Right to Keep and Bear Arms, the National Alliance of Stocking Guns Dealers. He worked for all of those groups in California and he helped draft and lobby for the passage of the very first state law in the nation about 20 years ago that granted immunity to the industry from this kind of lawsuit, a similar bill to what we are considering here today. His success in that area, caused him to be hired as the lead of the Director of the Government Affairs, eventually Executive Director of the American Shooting Sports Council, which up until a few years ago, was the largest and most influential trade organization representing the gun industry. In his role as executive director of that organization, he was privy to many meetings of directors, of officers, of the leaders of the gun manufacturers, distributors and dealers. He represented those groups before congress and before the public on national TV, advocating for their right and the importance of protecting their industry. But he also began to realize that the industry had an opportunity to be a part of the solution instead of a part of the problem. What is the problem? The problem has been a continued and growing rate of criminal use of guns. Not by law-abiding citizens, but people who have criminal records, convicted felons, who can readily purchase guns through the distribution network. In fact, we have heard a lot of talk about SARS. We are concerned about SARS over the past six months, since the SARS outbreak began, approximately 500 people have died of SARS. In the past six months in this nation, over 5,000 people have been murdered with the use of a firearm. Over those past five or six months, in this country, over 35,000 have gone to a hospital because of an injury from a firearm. What is interesting is that this criminal use of firearms has been traced by the (ATF) Alcohol, Tobacco and Firearms. Formerly Bureau...I guess it is now under the Attorney General's Office as part of the recent reorganization. But the Bureau of ATF began tracking this. They said, we have to have a way to figure out where these arms are...handguns in particular, are reaching the criminal market. They began a tracking system. They have a whole office in West Virginia, which in every time there is a crime, the police are supposed to report the serial number of the weapon, manufacturer, and they track it down and figure out who the manufacturer sold it too, the distributor and who the distributor sold to a dealer. What they found is that the vast majority of dealers operate responsibly. In one recent year study, 86 percent of all dealers, not a single gun that they sold went into the hands of criminals or was used in a crime, I should say, because we don't know if they went into the hands of a criminal, but 86 percent of



dealers, no guns that they sold, were used in a crime. Fourteen percent of dealers had some guns that were used in crimes, but of that 14 percent, only 1 percent of the total of all dealers, were there ten or more guns used in crimes. That one percent of dealers accounted for the vast majority, about 57 percent of all guns used in crimes. So the ATF sort of thought, well gee, if we could just cut off the supply to this one percent of corrupt dealers who circumvent the law in a variety of ways, one of which is called a straw man transaction, in which a criminal convicted felon comes in to buy guns, picks up the guns, pulls the money out of their wallet and then somebody standing next to them says, "well I am buying the guns." The "Straw-Man Purchase" is a known technique to circumvent the law. Some dealers facilitate this. They explain how you can do this and how to cover it up. This has been documented. You might say, why isn't the ATF going after this? Well one of the problems with ATF is that they have been downsized. They have been stretched to the limit. They have all 440 agents responsible not only for all of these, over 100,000 dealers, but also for looking at all of the dealers and distributors for Alcohol, Tobacco and explosives as well. So ATF said, "what we would like to do is to give the industry this information so that they can use this information to cut off the supply to these corrupt dealers, the one percent of the dealers that account for the vast majority of weapons, handguns used in crimes", but the industry didn't want to hear about it. Bob Ricker said, "maybe this is a good idea" and he tried to work to help be part of the solution. He tried to bring his industry into the solution. The industry didn't like it and he was told in a memo that he needed to be silenced in a memo that went to other industry executives, just a few years ago, and his organization was actually eliminated, and his job was eliminated. He went along for a couple of years and then a year or two ago he decided that his conscience was bothering him and he became a whistleblower. A gun industry career executive who has become a key witness, the smoking gun, that is, I think, in large part, a reason for this legislation, and the legislation at the national level. Not because there is anything frivolous about these lawsuits, but because as one gun industry attorney said in *Gun Weekly*, "his affidavit is devastating." It is devastating because he provides hard evidence of the culpability of negligence of willful conduct to facilitate, to profiteer from the sale of guns into the criminal market. This country has a tradition. In fact, we have a constitutional provision. Part I, Article 14 that says "[Legal Remedies to be Free, Complete, and Prompt.] Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character;". Now certainly a dealer, distributor, manufacturer who is acting responsibly, who is following reasonable industry standards, should have no fear of a lawsuit. But I think that the fear is there, because some people know that there may be culpability. There may be a change. There may be less profits from the massive sale of handguns to criminals, but not from law-abiding citizens. I don't understand this fear that we are going to see a shut down of the whole industry and can't buy guns and ammo because of a few lawsuits at this point. It hasn't happened in other industry where we have had lawful option products. What the litigation intended to do is to clean up peoples acts and hold them accountable, and to encourage responsible business practices. So I would urge the defeat of this bill. I don't feel that there is any problem in New Hampshire with people, with lawsuits being brought, and I think that there may be some unforeseen consequences which are not desirable. Thank you Mr. President.

SENATOR SAPARETO: Senator Below, would you believe that Savage Arms has spent \$350,000 in defense of lawsuits, is the testimony that we heard? My second, my main question here is why don't we, for the same reasoning, sue an auto dealership for selling a vehicle to a person with a suspended or revoked driver's license in which case the driver's license was suspended for the purpose of negligent homicide? Why isn't that same liability apply in that case?

SENATOR BELOW: Well somebody could sue them for that. Whether they have a case or not is a separate question. You only have a case if you can show that there is willful, negligent conduct that is beyond the grounds of reasonable, prudent behavior that has contributed to the injury. The first example that I gave of a pharmaceutical company. If they are selling to their regular channel, no problem. But if they are deliberately selling into the black market because they can profit from that sale through the black market, then that facilitates the injury, contributes to the injury, in a way that a prudent, reasonable person would say, 'you shouldn't do that'. If you know that person that you just dealt with is going to sell them to the black market, then you shouldn't sell it to them. If you know that your product could be used in an unlawful way that is going to cause injury. So I think that is what is at stake. Car manufacturers have been subject to lawsuits over whether they were behaving reasonably. One of the things that the lawsuits have done in the car industry, has exposed some of the internal behavior of companies when they knew that they were manufacturing a product that had a simple fix, and they could profit by not taking that fix and yet, not making that fix caused the death of scores of people. When those people found that out, people have won lawsuits, entitled lawsuits, has caused car manufacturers to clean up their act, and to act responsibly prudent. I think that is what we are asking the gun industry to do, too. Act responsibly and prudently, not negligently, willfully, complicity participating in an illegal act or activity. Again, I don't know if those allegations are going to be proven, but I can't see why we would want to preclude a citizen from being able to make that claim, that they **TAPE INAUDIBLE** potentially prevail if they can prove that it is true. We are all subject to potential lawsuits and have to defend ourselves, but the solution is not to say that we are going to be in lawsuits, because we have the constitutional right to recourse in the court when we are injured and harm is caused.

SENATOR FOSTER: Thank you Mr. President. I rise in opposition to the legislation. I want to reemphasize what Senator Below mentioned a few times in his remarks. He talked a lot about some of the facts underlying some of these suits and mentioned who knows whether they are valid or not. What I want to emphasize is the constitutional provisions. We all, when we come here, have taken on the law that upholds the constitution. We all take that, I think, responsibility, very, very seriously. Each and everyone of us. In our constitution of New Hampshire is unique. Senator O'Hearn and I, and with Senator Gatsas, discussed this yesterday, that for a very long time, and with Senator Larsen and Senator Green, and our constitution is somewhat unique on the issue of taxation. It makes our public education funding much more difficult to find to some extent in our states. Our constitution is unique in a lot of other ways as well. The provision that Senator Below read, I think, is somewhat unique to our constitution, and maybe in some other states' constitutions, but it says "Every subject of this state is entitled to a certain

remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws." What this bill does is it gets rid of a remedy. It just wipes it out. We are not making a judgement here today on whether these cases are valid or not, what this legislation does is grant immunity to an industry. I don't know...I am not sure, but I can't think of another industry in New Hampshire where we do that, just grant them blanket immunity from claims. Now there is some discussion, I think there are some bills going through the legislature to cap damages, I think in medical negligence cases, but we are not ridding the remedy. We are not getting rid of the remedy entirely. It has been tried on and off in other areas in the courts from time to time, it has had cases come up where remedies are being abolished and they look at those cases very strictly and sometimes have struck down those types of accounts. Sometimes some of the cases are as follows, "statutory classification restricting a right to recover for an injury, must be reasonable and not arbitrary. Must rest upon some ground of difference having a fair and substantial relation to the object of the legislation. Whether the bill satisfies the standard depends upon whether the restriction of the private rights sought to be imposed and not so seriously that it outweighs the benefits thought to be conferred upon the general public." I have heard nothing today that makes this legislation come close to that kind of standard. We are making legislative findings. We don't usually do that. Some of our bills have legislative findings, but this one does. The first part, on line two to four, talks about that we are going to prohibit civil dealers. Just telling us what the bill is going to do. So what is the object? The object is preserve the citizens access to the supply of firearms and ammunition for all lawful purposes including hunting, self-defense, collecting and competitive or recreational shooting. Do these two threaten those rights? Does our right having access to a supply of firearms threatened by these suits? I haven't heard that. I doubt that there was any testimony to that effect. It might drive the price up a little bit because these companies legal fees are going to go up until we figure out whether these lawsuits are valid or not. It certainly is not going to drive our ability to supply firearms out of the state of New Hampshire or any other state for that matter. So I just fail to see that there has been a legislative finding here made that comes close to the requirements of our constitution to wipe out a remedy. Thank you.

SENATOR PRESCOTT: Mr. President. Senator Foster, the use of a firearm in something bad that happens: Does this bill affect the, or give that person that used the firearm to make something bad happen, immunity?

SENATOR FOSTER: The person who used the firearm, immunity?

SENATOR PRESCOTT: Yes.

SENATOR FOSTER: I don't believe that it does that.

SENATOR PRESCOTT: Thank you.

SENATOR CLEGG: Thank you Mr. President. I rise in support of the bill. I think what the bill is doing is the right thing. If somebody uses your product, uses it for a criminal act, unlawful purpose, you are not responsible. There is nothing wrong with that. I listened to the speeches today and they are great speeches, and I won't have to take my jacket off. But, what I heard was that the government went out and told somebody that somebody over there is buying your product and selling it on

the black market, and you need to stop selling them your product. So what I am being told I guess, is that when the government says to me, that is a bad guy, stop doing business with him, I should just listen to it, yet the government didn't take these people to court. I didn't hear that. Maybe I missed it. There was no jury trial. Somebody didn't convict them for doing the wrong thing. We are just supposed to take the government's word and stop selling our product to those companies. I can't do that. The right to recourse? We limit liability actions every session. We have done it a couple of times, and we did it in SB 119. And no, I don't want to debate that one again. What limits our people from maintaining or being able to get the ammunition and firearms? It is the lawsuits. What's really behind the lawsuits? By suing a manufacturer, you make the product, first of all, unaffordable, and the real purpose is to try and get as many to go out of business as you can get. What happened to the company in Connecticut? They couldn't afford to fight the lawsuit, so they decided to change their product. What happened? People got very upset and said that they weren't going to buy their product, so there was a lot of jobs lost. It is time that we said to people, the one who is responsible for the action is the one who commits the action. Stop looking beyond that, because those lawsuits now here are about money. How much can I get? The guy who took a shot at me, well he doesn't have much, so who is in line? Who can I get? Can I get the automobile manufacturer because he drove a Chevrolet to come shoot me, so I sue him because, gee, who was the dealer that sold him the pickup truck to come here anyway? I shouldn't use pickup truck, huh? A Volkswagen. So I sue Volkswagen now because the guy drove a Volkswagen or a Mercedes. This is all about making people responsible for their own actions. Stop pushing the blame onto the next guy or the next guy. That is what this bill does. It says that if you sell a legal product and somebody uses it unlawfully, you are not responsible. Thank you Mr. President.

SENATOR LARSEN: We are not just talking in this bill about liability. It is in fact the only one that I am aware of...a proposal to blanket...offer blanket liability to a manufacturer. We are also talking about distributors and dealers. You heard from Senator Below, someone from within the industry who revealed that there is an awareness that dealers are in fact, acting irresponsibly and this would offer blanket liability from a dealer. We live in an age when all of us are concerned about terrorism. What about a dealer that sells hundreds of guns or hundreds of some product to someone who proposes to use that for a terrorist activity? Are we going to say that that dealer who may have had very decent knowledge or at least a good suspicion, that they should be immune from future legal action? This bill is a blanket. It covers the whole shebang. It covers manufacturers, distributors, dealers, importers. It is a giant step in the wrong direction. We did a search recently and found that the vote in the House of Representatives was 285 to 140 to pass this same blanket immunity. Why is New Hampshire jumping on this bandwagon? We could wait for Washington to make that...this mistake. I suggest perhaps that we put it on the table. Maybe we should wait and see what Washington does about this. In Washington, some of the quotes are "legal experts in Washington could prevent civil penalties in a case of where a gun dealer sells to a felon." For example, a measure to prevent victims of the Washington area sniper shooting from suing the Tacoma Washington gun dealer who supplied the Bushmaster rifle used in the shooting." In the same article, they say that "several U.S. lawmakers probed say that they felt forced to vote for the bill or face a serious gun activ-

ist and the possibility of losing re-election." I call on all of you to use caution in doing this kind of a step so early. I urge you to think twice before you pass a blanket immunity. This immunity act would overturn a long-standing common law and common sense. Under existing laws, manufacturers of all products have a responsibility to design them so they don't cause unnecessary risks or harm. That is the reason cars come with seat belts. That is the reason why there are cords on venetian blinds. They come apart when you yank them hard. I am quoting from the *Philadelphia Inquirer*, that it makes good sense to raise it in your minds. Cars are not meant to be crushed and venetian blinds aren't meant to be wrapped around your neck, but accidents happen and so products from toys to appliances, are designed with safety in mind and are recalled when they cause injury, but not...even those simple devices such as safety grips, locks and ammunition indicated could prevent that. A recent GAO study of unintentional shooting saw that safety grip devices and ammunition indicators would have reduced injuries and death by 31 percent and gun locks would have lowered the numbers even more. Guns are the only product besides tobacco that are exempt from federal oversight by the consumer product safety commission. When that commission was created congress wrote in a provision that excluded guns and said that the commission can recall playpens, hairdryers, cigarette lighters, toasters, and staplers, but not guns. This blanket immunity, here in this state, would squash cases like the one brought by someone like the Philadelphia mother: Her seven year old son was killed by a little boy playing with the gun that he found on the street. The gun had no childproof safety device and it ended up on the street because the negligent gun dealer had sold it to a gun trafficker. We heard of cases that the whistleblower indicated, in his statement he said, "although I strongly believe that law-abiding citizens have the constitutional rights to keep and bear arms, it is my view that the firearm industry should take greater responsibility for instituting reforms of its business practices to guard against the acquisition of firearms by children, felons and other prohibited persons. I believe that such reform could greatly benefit the industry and the public at large. The firearm industry has long known that the diversion of firearms from legal channels of commerce, the illegal black market in California and elsewhere, occur principally at the distributor/dealer level. However, until faced with the serious threat of civil liability for past conduct, leaders in the industry have consistently resisted taking voluntary actions to prevent firearms from ending up in illegal markets and have sought to silence others within the industry who have agitated reform." Do we want to limit...do we want to offer that kind of blanket immunity? Do we want to make our state kowtow to an industry? I ask for your courage in this vote. I ask for you to think about the wisdom of jumping into this because it seems to be the movement of the present. I ask you to keep the legal avenues open. It is the only road that we have that can make the gun industry accountable. I urge you not to pass HB 811.

**Senator Flanders moved the question.**

**Adopted.**

**Question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Sapareto.**

**Seconded by Senator Boyce.**

SENATOR COHEN: Mr. President, when someone makes a motion to move the question, that applies from that point on. People who indicated to the President that they wished to speak, have always been allowed to speak prior to moving that question. It cuts off debate after those people speak. I wanted that to be noted.

SENATOR EATON (In the Chair): Thank you Senator Cohen.

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**The following Senators voted No: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 17 - Nays: 6**

**Adopted.**

**Ordered to third reading.**

### **RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be by this resolution read a third time and all titles be same as adopted, and that they be passed at the present time.

**Adopted.**

### **LATE SESSION**

#### **Third Reading and Final Passage**

**HB 123**, relative to notice given to putative fathers in adoption proceedings.

**HB 153-FN**, relative to grounds for termination of parental rights.

**HB 192**, relative to disposal of controlled drugs in possession of law enforcement officers.

**HB 195**, prohibiting all part-time district court judges and district court clerks from practicing law in the district courts.

**HB 208**, relative to name changes for inmates and parolees.

**HB 211**, relative to town clerk fee deposit requirements.

**HB 214**, relative to discovery deposition of minors in criminal cases.

**HB 215**, relative to expungement of records contained in the DNA database.

**HB 218**, relative to the definition of beneficially interested person.

**HB 225**, extending the task force on deafness and hearing loss and changing the task force's membership and duties.

**HB 231**, requiring the department of education to develop a plan to address and reduce the number of persons awaiting vocational rehabilitation transition services.

**HB 269-FN**, relative to claims arising from clinical services provided to the department of health and human services.

**HB 320**, relative to permitting additional contributions in the city of Manchester employees contributory retirement system.

**HB 332-FN**, relative to the use of prerecorded telephone messages by candidates and political committees.

**HB 343**, establishing a boundary commission to determine the boundary between New Hampshire and Maine

**HB 368**, making technical corrections to the statutory list of dedicated funds.

**HB 379**, relative to penalties for OHRV violations by underage operators.

**HB 394**, relative to incompatible offices.

**HB 402**, relative to child passenger restraints.

**HB 423**, relative to safe deposit boxes.

**HB 477**, establishing certain speed limits.

**HB 481**, establishing a committee to study the pricing of milk products.

**HB 497**, relative to inactive status licenses.

**HB 506**, relative to health club membership initiation fees and renewal practices.

**HB 515**, excluding certain agreements between fish and game licensees and landowners from the right-to-know law.

**HB 529**, relative to the New Hampshire seed law.

**HB 560**, relative to penalties for operating an aircraft while under the influence of alcohol or drugs and making a technical correction.

**HB 561**, repealing the Uniform Aircraft Financial Responsibility Act.

**HB 593-FN-L**, relative to solid waste facilities in small towns.

**HB 658-FN**, relative to impersonation of candidates.

**HB 661-FN-L**, relative to Westport Village Road in the town of Swanzy.

**HB 699-FN**, relative to abandoned vehicles.

**HB 711-FN**, relative to the regulation of retail installment sales of motor vehicles.

**HB 766**, relative to the information required for a license to carry a pistol or revolver.

**HB 768**, establishing a committee to study the flow in the Connecticut River and the effect of the flow on water levels in Lake Francis and the Connecticut Lakes, and to study the use of certain state-owned property along the Baker River.

**HB 770-FN-A**, establishing a committee to study using tax policy to create incentives to encourage employers to hire disabled persons.

**HB 808**, relative to proof of residency and resident tax payment for receiving resident fish and game licenses.

**HB 811**, relative to limiting the liability of manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from misuse.

**HCR 3**, calling on the President and the Congress to fully fund the federal government's share of special education services in public elementary and secondary schools in the United States under the Individuals with Disabilities Education Act.

**HCR 5**, urging Congress to permit satellite television subscribers to select in-state broadcast signals.

### ANNOUNCEMENTS

SENATOR BELOW (RULE #44): I think that it is unfortunate that we feel the need to cut off debate when debate is in the middle of the process. I think that it is important as a deliberative party to have a chance to air the issues and talk these things out even if people already decided how they are going to vote. I think that our constituents and the public has the right to know what is on peoples minds on issues that as important as this. I actually had a floor amendment to offer. I am sorry that I didn't offer it earlier, but I didn't expect that people would be in such a rush to cut off debate. I wanted to hear every statement offered to see how it would end, but that opportunity is lost. I think that it would have been something that would have made the bill better if it had been considered, but we didn't even have the chance. I just wanted to say that I regret that and I hope that we will be perhaps, more cautious in the future, about rushing to call the vote. Thank you.

SENATOR BARNES (RULE #44): I just want to make the comment that we heard three speeches against and I thought that they were very elegant. You folks did a very nice job on them, and I don't think that it was rushed. I think the question was well represented on both sides of the issue. It is just an impartial view from a member of this body.

SENATOR JOHNSON (RULE #44): I just wanted to comment that in the past, my recollection has been that if the clerk has a list of speakers and the motion is called to move the question, those speakers would be allowed to speak. I didn't see that happening today and I think that you made the right decision.

SENATOR KENNEY (RULE #44): I would like to take a few moments and reflect on something that happened back in my district early this week. There was an occasion in Milton at the elementary school. There was a dedication of a granite bench to Sheldon "Skip" Damon. Skip Damon was well know in New Hampshire as a student, an educator, principal, superintendent and all-around good guy. He was from Milton and he passed away last year at a very early age. I came in contact with Skip when I was ten years old, when he was at Plymouth State College, and he dragged me out of the water because I had scratched my knee against some boulders under the water at ten years old and he properly took me to the doctors. To this day, I have that scar on my knee. So when I look down on my knee, I always think of Skip Damon. He was a wonderful man who later served as our superintendent to the Wakefield, Milton School District. He was a graduate of Plymouth State College. He had his Masters Degree in teaching at the University of New Hampshire. This is a way that Skip would want to be remembered, in front of a school that he had an association with, with a park bench. If you ever go by that school, it will say, "Student, principal, superintendent and friend" right on the granite bench. I just wanted to remember Skip.

### RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, processing Enrolled Bill Reports and Amendments, and receiving House Messages, and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

**In recess to the Call of the Chair.**

**Out of Recess.**



**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bills sent down from the Senate:

**SB 34**, relative to independent living retirement communities.

**SB 36-FN**, relative to protective custody of a person impaired by drugs and establishing a committee to study the issue of the applicability of the administrative license suspension laws to driving while under the influence of controlled drugs and ways to address the speed with which such cases are adjudicated in the district court.

**SB 39**, relative to the results of a preliminary breath test as evidence in court.

**SB 48**, exempting housing for older persons from certain age discrimination laws.

**SB 52**, relative to a voluntary certification program for police dogs and handlers.

**SB 56-FN**, relative to parking for persons with disabilities.

**SB 57-FN**, relative to certain accounts within the fish and game fund.

**SB 66-FN-A-L**, limiting the exemption from the meals and rooms tax for sales of alcoholic beverages by voluntary nonprofit organizations operating under one-day licenses from the liquor commission.

**SB 79-FN-L**, relative to penalties for the exhibition of fighting animals.

**SB 91**, extending the committee to study eminent domain proceedings and adding certain duties.

**SB 129**, relative to the board of tax and land appeals and eminent domain cases.

**SB 138-FN**, clarifying the exemption from the interest and dividends tax for distributions from qualified tuition savings programs.

**SB 145-FN-A**, relative to the duties of the board of trustees of the department of regional community-technical colleges.

**SB 165**, relative to the voluntary dissolution of nondepository trust companies.

**SB 166**, establishing a committee to study methods for the state to create incentives for school districts to provide mentoring for beginning teachers.

**SB 171**, regulating non-agricultural activities which may cause the introduction and spread of infectious wildlife diseases.

**SB 173**, relative to certain historical and recreational facilities.

**SB 190**, relative to community living facilities.

**SB 198**, relative to a certain highway sign in Concord.

**SB 219**, relative to superior court notice to health care regulatory boards of felony convictions of health care providers.

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Bills sent down from the Senate:

**SB 18-FN**, relative to vehicle stops at railroad grade crossings.

**SB 33-FN**, establishing a putative fathers' registry in the department of health and human services.

**SB 96-FN**, establishing a pharmacy discount program for seniors and disabled persons and making an appropriation therefor.

**SB 147**, establishing a committee to study alternative strategies to relieve the property tax burden on private educational institutions and to encourage scholarships to New Hampshire students.

**SB 172-FN**, increasing certain fees charged by the secretary of state.

### HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

**HB 77**, establishing a committee to study the process of de novo appeals from the district courts.

**HB 179**, establishing a committee to study enhancement of laws relating to vehicle pursuits.

**HB 212**, defining "terrorize" for the purpose of criminal threatening.

**HB 244**, establishing a committee to study landowner liability for owners providing public access to snowmobile trails.

**HB 253**, relative to the design build concept for certain projects.

**HB 436**, relative to the acquisition of Connecticut Valley Electric Company and electric utility restructuring and relative to the real estate and personal property tax exemption.

**HB 831**, adding duties to the oversight committee on health and human services.

### HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in its amendments to the following entitled House Bill sent down from the Senate:

**HB 127**, establishing a committee to study the effectiveness and fairness of county government.

### REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

**HB 57**, relative to the use of inhalers by pupils and campers with asthma.

**HB 59**, relative to court reporting.

**HB 92**, relative to the use of epinephrine auto-injectors by pupils and campers with severe allergies.

**SB 104**, relative to state administration of medicaid benefits and services for individuals who are deaf or hard of hearing.

Senator D'Allesandro moved adoption.

**Adopted.**

### LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*May 15, 2003*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good morning! Any thinking follower asks three questions about a potential leader. Why should I follow this particular person? Where will I end up if I do follow him or her? How will I be treated along the way? You are our leaders and those three tough questions are good ones for you to be candidly asking about yourselves as well. Why should anyone follow me today? The answer to that is going to have a lot more to do with your character than with your ideas and positions on issues. Who you are ought to be why I should follow you. Where will a person end up if they follow me today? Hopefully, the answer to that question is not, "they'll end up politically victorious" but is rather that, we, your followers will find ourselves more valued and secure because of how you lead. I'd follow you anywhere when that is the goal. How am I treating people along the way? That, of course, is the key question to all you do. When the answer is "with dignity, with honor, with gentleness and with deep respect", then whatever you accomplish, or attempt to accomplish has a profound value. Three leadership questions for everyone. Think about it. Thank you for your leadership.

Let us pray:

*Send us Your wisdom, great God, from high above our heads and from deep within our hearts, that we may know what to do, how to do it, and ask that You might continually craft within each life here, character to be followed, destinations that inspire and an all pervasive aroma of respect that ever reflects Your disposition toward each one of us. Amen.*

Senator Martel led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS

### COMMITTEE REPORTS

**HB 619-FN-A**, expanding opportunities for dropout prevention and dropout recovery. Education Committee. Ought to pass with amendment, Vote 3-0. Senator O'Hearn for the committee.

**Senate Education**

**May 8, 2003**

**2003-1546s**

**04/03**

### **Amendment to HB 619-FN-A**

Amend the title of the bill by replacing it with the following:

**AN ACT** expanding opportunities for dropout prevention and dropout recovery, and making an appropriation therefor.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 Appropriation. The department of education shall expend a sum not to exceed \$350,000 in the fiscal year ending June 30, 2004, and a sum not to exceed \$350,000 in the fiscal year ending June 30, 2005, from funds appropriated to the No Community Left Behind program in PAU 06, 03, 02, 02, 04, 92, to implement the dropout prevention and dropout recovery.

ery program established in this act in the 5 high schools which, in each of the fiscal years 2004 and 2005, are determined by the department of education to have the highest dropout rates.

**2003-1546s**

#### AMENDED ANALYSIS

This bill establishes a dropout prevention and dropout recovery program in the department of education to provide a variety of services to high school students and requires that funds appropriated to the No Community Left Behind program be expended to implement the program in fiscal years 2004 and 2005.

SENATOR O'HEARN: Thank you Mr. President. I move HB 619 ought to pass with amendment. This legislation provides an opportunity for the Department of Education to address high school dropouts. Dropout rates in New Hampshire are high. This program parallels the already existing program, Jobs for New Hampshire's Graduates or JAG's. The committee was fortunate to have several students testify on the success of the JAG program. Of the students participating in this program, 80 percent graduate high school and go on to postsecondary education and training. Several of the students that testified had failed at school, were involved with drugs and alcohol and constantly in trouble with the police. All of those students are now attending school on a regular basis with either academic or career goals for the future. A couple of the students are not in leadership positions within the program. This program provides these kids with the motivation to succeed in life. This is a national program, which has real results for New Hampshire. Please support the committee recommendation of ought to pass as amended. Thank you.

SENATOR BARNES: Thank you Mr. President. I would just like to say that this program has worked very well in the town of Raymond. Raymond had a very high dropout rate, had for a number of years. This program has helped the students in Raymond stay in school and I think it is fantastic.

SENATOR D'ALLESANDRO: Thank you Mr. President. In the most recent New England Association Studies of the Manchester High Schools, we did note that we did have a significantly high dropout rate, particularly Manchester High School Memorial. I think that the purpose of this legislation is to give youngsters the desire to remain in school by putting together a program that makes sense to those students. Good counseling, good curriculum, which makes them a responsible individual and it excites them in remaining in education. We have a program in Manchester called the PASS Program which is a very small program of about 60 students. That PASS Program is a voluntary program. The students must really manifest a desire to stay in school. I think that something like this is essential, because the inducement of the individual to go back is what will keep that person in school. You don't force them, but you talk to them and they have that desire to go back, and that is essential. We know how important that is. Now Manchester, in one of our studies, had a 30 percent dropout rate in one of our schools. That is very, very significant. Anything that can enhance a program by reducing that dropout rate, I think, is essential. So programs like this are very needed. Now there is a price tag with this. I think that we all need to recognize the fact that it costs money to do these things, but it does have a long-range benefit. In recognizing that, I want to say two things. Women in the New Hampshire State Prison, have an education rate of about fourth grade.

A significant percentage of them are illiterate because they left school. Something like this enhances them to staying in school. When you look at the population of the state prison, you realize one thing. The median age is going down and the level of education is down, and most of those are high school dropouts. So programs that prevent that step are very essential. I might say there is a pay now or pay later provision. I think that it is better to pay now than to pay later, because the significant payment later is a very heavy one. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Recess.**

**Out of recess.**

**Question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Sapareto.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Below, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Foster, Larsen, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Estabrook, Morse, Prescott, Cohen.**

**The following Senators voted No: Clegg.**

**Yeas: 22 - Nays: 1**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 737-FN-A**, relative to the state conservation committee and making an appropriation therefor. Environment Committee. Ought to pass, Vote 3-1. Senator Cohen for the committee.

SENATOR COHEN: Thank you Mr. President. This bill will provide additional funding in order to allow the State Conservation Committee to hire an executive director. The committee heard ample testimony describing the benefits that a qualified executive director would bring to their committee. Currently, the committee is very thinly stretched, and struggling to get by on a very small budget. As a result, the committee has missed important opportunities to apply for federal financial assistance. The addition of an executive director would allow the county districts of the committee to focus on their conservation efforts, while the executive director focuses on finding federal money to continue the organization's beneficial programs. The committee believes this bill warrants further analysis by the Finance Committee, and therefore, recommends that it ought to pass. Thank you Mr. President.

SENATOR EATON (In the Chair): Thank you Senator Cohen. You sound much better this week.

SENATOR COHEN: Thank you. I feel much better.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 738-FN-A-L**, permitting aid to public water systems to be used for forming or improving regional water systems and making an appropriation therefor. Environment Committee. Ought to pass, Vote 4-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you Mr. President. I move that HB 738 ought to pass as was recommended by the Senate Environment Committee. This bill will provide a great benefit to the people of New Hampshire who rely on public water supplies, by connecting many of our regional water supply resources to each other. Doing so would allow for water to be transported from one region to another in the event of emergencies. The Department of Environmental Resources told the committee that this bill would be sound public policy that could effectively deter potential environmental and health disasters in the future. Everyone who testified in the hearing for this bill supported it fully. We believe the bill merits further study by the Finance Committee to determine if we have the finances to support it. I ask the full Senate to act upon the recommendation of the Environment Committee. Thank you Mr. President.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 293**, establishing a commission to identify medical errors and their causes. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 4-0. Senator Prescott for the committee.

**Senate Executive Departments and Administration**

**May 8, 2003**

**2003-1559s**

**01/03**

#### **Amendment to HB 293**

Amend paragraph I of section 2 of the bill by replacing it with the following:

I. The members of the commission shall be as follows:

(a) Three members of the house of representatives, at least one of whom shall be from the house health, human services and elderly affairs committee, appointed by the speaker of the house of representatives.

(b) One member of the senate, appointed by the president of the senate.

(c) Two representatives of hospitals, appointed by the New Hampshire Hospital Association.

(d) Two pharmacists, appointed by the New Hampshire pharmacy board.

(e) Two physicians, appointed by the New Hampshire Medical Society.

(f) Two nurses, appointed by the New Hampshire Nurses Association.

(g) Two attorneys, appointed by the New Hampshire Bar Association, one of whom shall be a member of the New Hampshire Trial Lawyers Association.

(h) The commissioner of the department of insurance, or designee.

(i) Three public members, appointed by the governor.

(j) Two members of the New Hampshire Association for Healthcare Quality, appointed by such association.

#### **MOTION TO TABLE**

Senator Prescott moved to have **HB 293** laid on the table.

**Adopted.**

**LAI D ON THE TABLE**

**HB 293**, establishing a commission to identify medical errors and their causes.

**HB 389**, relative to victim impact statements and deleting the prohibition on funding certain positions in the office of victim/witness assistance with funds from the victims' assistance fund. Executive Departments and Administration Committee. Ought to pass, Vote 3-0. Senator Peterson for the committee.

**SENATOR PETERSON:** Thank you Mr. President. I move ought to pass on HB 389. New Hampshire law allows victims of crimes to make statements during the sentencing phase of a trial in order to inform the judge or jury how the crime has influenced the victim's life. The law does not currently allow someone to speak on behalf of the victim, even when the victim suffers from physical or emotional problems as a result of the crime. House Bill 389 would allow victims to send a representative who does not have to be a lawyer, to make a statement. The bill allows statements to include the immediate impact of the crime as well as the consequences that occurred up until the moment the statement is made. All statements are currently subject to perjury laws, and the defendant is allowed to argue points raised by the victim. House Bill 389 also authorizes the Attorney General's Office to use funds from the Victims Assistance Fund to underwrite the office of Victim and Witness Assistance. When the fund was started, there was a concern that it would be used to support a variety of nongermane causes. The committee believes the office of Victims Assistance is an appropriate application of the fund and unanimously recommends ought to pass. Mr. President, we rightfully respect the rights of the accused in a criminal trial. But this is a bill that is a chance for us to make a statement in favor of victims rights as well, and expand those rights to a reasonable degree. I ask the Senate to support this legislation.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 564-FN**, relative to access to information in proceedings of the judicial conduct commission. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 5-0. Senator Peterson for the committee.

**Senate Executive Departments and Administration**

**May 8, 2003**

**2003-1558s**

**09/05**

**Amendment to HB 564-FN**

Amend RSA 494-A:11-a, I as inserted by section 1 of the bill by replacing it with the following:

I. Notwithstanding any other provision of law to the contrary, a person subject to the code of judicial conduct may provide to the members of the judicial conduct commission, its staff and agents, and in the performance of its official duties the judicial conduct commission may review, any tapes, transcripts, records of proceedings, information, files, and other documents which would otherwise be confidential. No member, staff, or agent of the judicial conduct commission shall disclose such information except in the course of official duty.

SENATOR PETERSON: Thank you Mr. President. I move ought to pass with amendment on House Bill 564. House Bill 564 resolves a conflict between two laws. The first requires judicial proceedings to be confidential. The second, the statute that created the Judicial Conduct Commission, requires open proceedings about misconduct even when the conduct occurred, during a confidential proceeding, such as a juvenile proceedings or probate issues. It is a Catch-22. By observing the law, the JCC, as it is known, breaks another law. Recently, one complaint made to the JCC could not be investigated because the investigating lawyer would not look at confidential information. House Bill 564 authorizes judges to provide records of confidential proceedings to the Judicial Conduct Commission when a complainant alleges misconduct during such proceedings and authorizes the commission to go into a closed session to conduct all or part of a disciplinary hearing concerning misconduct during a confidential proceeding. House Bill 564 also requires a public summary of the JCC's action. The committee amended the bill by removing language referring to the misdemeanor charge for releasing confidential information because judges are already subject to the penalty. The committee unanimously recommends ought to pass with amendment on this bill which was brought to us by former Speaker, Donna Sytek. Thank you Mr. President.

SENATOR BOYCE: Thank you Mr. President. Senator Peterson, I am curious why you said that the amendment strikes that last sentence and you said that it was because judges were already subject to that penalty of misdemeanor; however, this says, "any member, staff or agent". So the staff and the agents and a member that is not a judge, would not be covered under...what you said, if it is just the judges that are covered by that misdemeanor.

SENATOR PETERSON: The blurb that I read or the notes that I read to the Senate, are referred to the judges. My recollection of the information provided at the hearing is that these confidential matters have sanctions requiring anyone who discloses them to be...to fall under the penalties that are already provided. That was the reason that we took out this section of the bill. If Senator Prescott has a different understanding, as Chairman of the committee, I would be glad to yield to his comments, but that is my recollection of the reason we took the action that we did.

SENATOR BOYCE: I have a question of Senator Prescott, only if he feels that he has something different to add. No? okay, no question then.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 164-FN-A**, increasing the gross premiums tax on insurance provided by certain unlicensed companies. Insurance Committee. Ought to pass, Vote 3-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. **TAPE INAUDIBLE** fairs and fireworks and so forth, taxing and a premium of two percent. Maine is three percent, Vermont is three percent and Massachusetts is four percent and so forth. We are the lowest in New England. We thought it was time to bring it up. This bill would increase it to three percent. This is the Insurance Department's way of



helping the general fund by bringing in approximately \$480,000 in the next two years. I know it isn't much, but it is our contribution to the general fund. We ask that you pass this.

SENATOR D'ALLESANDRO: Senator Flanders, is this increasing the tax only on the unlicensed companies or is it across the board?

SENATOR FLANDERS: **TAPE CHANGE.**

SENATOR D'ALLESANDRO: Three. The rest of it remains at three, two?

SENATOR FLANDERS: Of whatever it is.

SENATOR D'ALLESANDRO: Okay. Thank you. Thank you Mr. President.

SENATOR GREEN: Senator Flanders, am I to believe that this is an increase in taxes?

SENATOR FLANDERS: No. If we look at it closely, it is an increase in fees for people who are going to put on fireworks and so forth.

SENATOR GREEN: What is the issue referred to on the law? Is it referred to as a tax or a fee?

SENATOR FLANDERS: This is a two percent to a three percent increase in gross premiums.

SENATOR GREEN: It is not a tax?

SENATOR FLANDERS: It is not a tax.

SENATOR GREEN: Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 287**, establishing a professional malpractice claims study commission. Insurance Committee. Ought to pass with amendment, Vote 3-0. Senator Martel for the committee.

**Insurance**  
**May 8, 2003**  
**2003-1561s**  
**01/09**

### **Amendment to HB 287**

Amend paragraph I of section 2 of the bill by replacing it with the following:

I. The members of the commission shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house.

(b) One member of the senate, appointed by the president of the senate.

(c) Two dentists, appointed by the New Hampshire Dental Society.

(d) Two physicians, appointed by the New Hampshire Medical Society.

(e) Two attorneys, appointed by the New Hampshire Trial Lawyers Association.

(f) Two members of the public, appointed by the governor.

(g) One representative of the Medical Liability Insurance Carriers, appointed by the insurance commissioner.

(h) One representative of the Joint Underwriters Association, appointed by the insurance commissioner.

(i) Two representatives of the New Hampshire Hospital Association, appointed by such association.

(j) One superior court clerk, appointed by the chief justice of the superior court.

SENATOR MARTEL: Thank you Mr. President. I move that HB 287 ought to pass with amendment as was recommended by the Senate Insurance Committee. This bill is the result of much study conducted by an Ad Hoc Committee formed last summer to look at the issue of increasing malpractice insurance premiums. That Ad Hoc Committee determined that there is really no single solution to the problem. Instead, it will require several smaller steps. The commission established in this bill is intended to start the ball rolling on this issue. The commission will look at ways to improve upon RSA 519-A, which refers to a now-defunct Medical Malpractice Review Board that was designed originally to handle malpractice claims. Because this review board has not been used in over ten years, many of us believe it has directly influenced the dramatic rise in malpractice insurance costs. The committee believes that we need this commission to look into reviving the malpractice review board. Therefore, we voted it out of the committee with the recommendation of ought to pass with amendment. I ask the Senate to support this recommendation and I thank you Mr. President.

#### **Amendment adopted.**

Senator Prescott offered a floor amendment.

Sen. Prescott, Dist. 23

**May 15, 2003**

**2003-1651s**

**01/09**

#### **Floor Amendment to HB 287**

Amend the bill by replacing section 1 with the following:

1 Commission Established. There is established a commission to study professional malpractice claims under RSA 519-A and to identify medical errors and their causes.

Amend the bill by replacing section 3 with the following:

3 Duties. The commission shall study professional malpractice claims under RSA 519-A. The commission's study shall include an examination of the panel established pursuant to RSA 519-A and determine how this panel can become a tool to be utilized in keeping the cost of liability insurance down. The commission shall also identify medical errors and their causes and shall determine methods relative to fixing such causes.

**2003-1651s**

#### **AMENDED ANALYSIS**

This bill establishes a commission to study professional malpractice claims. The commission shall also identify medical errors and their causes.

SENATOR PRESCOTT: Thank you Mr. President. I would like to bring forward an amendment concerning the tabling of HB 293 and would like to be able to speak to the amendment that is being passed out. Thank you Mr. President. Two similar commissions are on the docket today. House Bill 293 I would like to combine with HB 287. House Bill 293 would establish a systematic study of medical errors and their causes. According to *The New England Journal of Medicine*, "Medical errors may contribute to as many as 80,000 to 100,000 deaths in the United States every year."

Legislative action is needed to put into place, a comprehensive study that will engage and benefit both the industry and the public. The committee amended the bill by reducing the Senate members to one member of the commission, and adding the New Hampshire Association for Healthcare Quality to the commission and requiring that one attorney member of the commission, be selected from the New Hampshire Trial Lawyers Association. The commission will be able to review general data, but will not be able to access individual patient information. The Medical Society and the Trial Lawyers support the legislation, and the committee unanimously recommends ought to pass with our committee amendment. That is in this new amendment, to be combined with HB 287. I appreciate you passing the bill as ought to pass by the committee. Thank you Mr. President.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 460-FN**, relative to property and casualty insurance. Insurance Committee. Ought to pass, Vote 3-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you Mr. President. I move that HB 460 ought to pass as was recommended by the Senate Insurance Committee. This bill merely makes some technical changes to the laws relative to property and casualty insurance. One of those changes would add a timely mailing provision by which the Insurance Department can determine whether a document required to be delivered by a certain date has been complied with. Another small change will require insurers with a minimum tax liability of \$100,000 or more to make their payment via electronic transfer. This bill is a simple bill and the committee supports it. Thank you very much.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 591-FN**, allowing a certain former state employee to apply for accidental disability benefits. Insurance Committee. Ought to pass, Vote 3-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. I realize in my short time in the Senate that this is an area where we don't like to go. We had a rather lengthy hearing on this young lady by the name of Carol Cushing who was a state employee. At one time, worked in Governor Merrill's office and as the result of changing of Governors, was transferred...and was injured when she fell while she was doing an errand out of the Governor's office. There was no question that it was a work related injury. She then transferred to the Office of Energy and it became worse. It ended up with internal injuries. Attempted to her illness to get somebody in her office to report this to the retirement board. My father would say that she got the short-end of the stick. It didn't happen. She was very ill. She went through workers compensation and collected her disability and at this time found that the time had lapsed for her to present her case. And I repeat, "present her case" to the retirement board. As the result of that, this legislation is only to allow her to "present her case" to the retirement board. It does not give her retirement. It does not give her any benefits. It just said that this particular person reported it to the commissioner and the commissioner did not report it; therefore,

with the evidence that we heard, felt that she should have an opportunity to "present her case" to the retirement board. I don't believe that anybody testified in opposition to this and we ask that you follow our lead and pass this legislation. Thank you.

SENATOR MARTEL: Thank you Mr. President. I fully concur with the description by Senator Flanders on HB 591-FN, which I believe will begin and the committee also will lead the process of protecting individuals, okay, who have serious injuries as this individual did. Sorry to say that this had to happen, but there was some kind of breakdown in the system, okay, which it caused her to have these major problems, and didn't give her a chance even to get to claim her case. So I ask and I fully concur with the chairman of the Insurance Committee and I ask you all to concur with our vote and pass this bill. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 639-FN-L**, relative to receiving legislative body approval through warrant articles before a municipality may continue a program initiated under a grant. Internal Affairs Committee. Ought to pass, Vote 3-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. All of us that bring bills forward in the Senate, all think that they are good bills. I think that this is one of my better bills. This is a situation where towns and municipalities receive grants from the federal government. We have all seen it happen in our towns. We have all seen our police departments go from part-time police departments to three and four cruisers. What this bill says is that once the federal grant has run out, in order for the town or municipality to continue that program, it has to be placed on the town warrant, and the assembly has to vote local money to continue that program. I think this is a good, fair piece of legislation. I think that it keeps...if some towns intend to slide these things into the budget, which happens, that cannot happen and the town will know what is happening with their local money and what is happening with their programs. We ask that you support HB 639 as amended. Thank you.

SENATOR D'ALLESANDRO: Thank you Mr. President. I speak with regard to this situation having been on the school board in Manchester for a period of time and talking about federal grants. There are grants that you get from the federal government and at the time that you accept that grant there is an implied situation, and that implied situation is that once the grant has expired, you will pick up the funding. Now that, in my understanding, is an implied consent to taking the grant. Under this situation, even if that were so, you would have to go back and get an approval at the local level to do that. I just wonder if that puts that situation in conflict, and if indeed you implied that when you took the grant and then it is voted down at this meeting, then in essence, would you be creating a situation where you bear the responsibility for the financial situation that you accepted then you didn't continue? That is something that we ought to consider, because in many of these situations there...let's just put it under the framework of maintenance of effort. If you discontinue that, are you creating a significant problem? Something that I think that we should consider. Thank you Mr. President.

SENATOR LARSEN: Senator Flanders, in reading the hearing report from the committee, it was my understanding that this bill does not apply to cities or impacts cities, in that chapter 32 only deals with towns and town school districts. Is that correct?

SENATOR FLANDERS: That is correct.

SENATOR LARSEN: So it doesn't affect those of us who represent larger cities?

SENATOR FLANDERS: That is right.

SENATOR LARSEN: Particularly since we don't have warrant articles.

SENATOR FLANDERS: That is right. In order for this bill to be effective, you have to have a warrant article.

SENATOR LARSEN: Thanks.

**Adopted.**

**Ordered to third reading.**

**HB 109-FN**, relative to telemarketing practices. Interstate Cooperation Committee. Ought to pass with amendment, Vote 3-0. Senator Estabrook for the committee.

**Interstate Cooperation**

**May 7, 2003**

**2003-1537s**

**05/04**

#### **Amendment to HB 109-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** prohibiting telemarketers from contacting customers on a federal do-not-call registry.

Amend the bill by replacing all after section 2 with the following:

3 New Subdivision; Telemarketing Sales Calls. Amend RSA 359-E by inserting after section 6 the following new subdivision:

#### **Telemarketing Sales Calls**

359-E:7 Definitions. In this subdivision:

I. "Bureau" means the consumer protection bureau of the office of the attorney general.

II. "Customer" means any natural person who is a resident of this state and who is or may be required to pay for or to exchange consideration for goods and services offered through telemarketing.

III. "Do-not-call list" means a list of residential telephone subscribers who have notified the list administrator of their desire not to receive telemarketing sales calls.

IV. "Doing business in this state" means conducting telephonic sales calls from a location:

(a) In this state; or

(b) Outside of this state to consumers residing in this state.

V. "Established business relationship" means an established business relationship as defined by the Federal Trade Commission Telemarketing Sales Rule, 68 Fed. Reg. 19,4669 (2003) (to be codified at 16 C.F.R. part 310, section 310.2(n)), as amended.

VI. "Goods and services" means any goods and services, and shall include any real property or any tangible personal property as well as time share estates and licenses or services of any kind.

VII. "List administrator" means the Federal Trade Commission or other federal agency, or, if necessary, the Direct Marketing Association,

Inc., Farmingdale, New York, or its successor organization, designated by contract entered into by the department of justice that accepts individual names, addresses, and telephone numbers of customers who do not wish to receive telemarketing sales calls.

VIII. "Person" means any natural person, association, partnership, firm, corporation and its affiliates or subsidiaries or other business entity.

IX. "Telemarketer" means any person who, for financial profit or commercial purposes in connection with telemarketing, makes telemarketing sales calls to a customer when the customer is in this state or any person who directly controls or supervises the conduct of a telemarketer or causes to be made a telemarketing call on such seller's own behalf or through a salesperson. For the purposes of this subdivision, "commercial purposes" shall mean the sale or offer for sale of goods or services.

X. "Telemarketing" means any plan, program, or campaign which is conducted to induce payment or the exchange of any other consideration for any goods or services by use of one or more telephones and which involves more than one telephone call by a telemarketer in which the customer is located within the state at the time of the call. Telemarketing shall not include the solicitation of sales through media other than by telephone calls.

XI. "Telemarketing sales call" means a telephone call made by a telemarketer to a customer for the purpose of inducing payment or the exchange of any other consideration for any goods or services or for the purpose of soliciting an extension of credit for consumer goods or services, or for the purpose of obtaining information that may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes. A telemarketing sales call shall not include a call made:

(a) In response to an express written or verbal request of the customer called.

(b) In connection with an established business relationship.

(c) In which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller.

(d) On behalf of a nonprofit charity.

(e) On behalf of a newspaper to build its own circulation, provided that the telemarketer making such call has used and observed with respect to such call the do-not-call list maintained by the Telephone Preference Service of the Direct Marketing Association, Inc., Farmingdale, New York, or its successor organization.

(f) On behalf of a political campaign, except that a call made by or on behalf of a political campaign using automatic dialing equipment shall be deemed a telemarketing sales call under this chapter.

359-E:8 Prohibited Telemarketing Sales Calls. Telemarketers are prohibited from conducting telemarketing sales calls to any customer who has registered his or her name or telephone number with the do-not-call registry maintained by the list administrator or Federal Trade Commission. In the case of telemarketers regulated by the Federal Communications Commission, this chapter shall apply in a manner consistent with rules concerning a national do-not-call list developed by that agency.

359-E:9 Telemarketers' Obligation to Obtain Do-Not-Call List. Telemarketers making telemarketing sales calls to customers in the state of New Hampshire shall obtain from the list administrator quarterly listings of customers in the state who have registered with the list administrator for inclusion in its do-not-call list.

359-E:10 State Do-Not-Call List. If the Federal Trade Commission or other federal agency has not established a national do-not-call registry prior to January 1, 2004, the department of justice shall contract with the Telephone Preference Service of the Direct Marketing Association, Inc., Farmingdale, New York, or its successor organization to establish and maintain, as the list administrator, a state do-not-call list for New Hampshire. The department's obligation to contract with the Direct Marketing Association or its successor to establish and maintain a do-not-call list shall remain in effect until such time as a national registry is established.

359-E:11 Duties of List Administrator. The list administrator:

I. Shall provide the bureau with a copy of each quarterly do-not-call list.

II. Shall provide the bureau with the names and addresses of each telemarketer who purchases the do-not-call list.

III. Except as directed by the bureau, shall be prohibited from disclosing or using in any way customer names, addresses, or telephone numbers obtained in the course of registering customers' telephone numbers on the do-not-call list.

359-E:12 Violations; Penalties.

I. The department of justice shall investigate any complaints received concerning violations of this subdivision. If, after investigating the complaint, the department finds that a person has violated any provision of this subdivision, the department shall impose a civil penalty of \$2,000 for each violation.

II. Notwithstanding paragraph I, a telemarketer shall not be held liable for violating this subdivision if the telemarketer can demonstrate by clear and convincing evidence that, as part of the telemarketer's routine business practice:

(a) The telemarketer established and implemented written procedures to comply with this subdivision.

(b) The telemarketer trained his or her personnel in the requirements of this subdivision.

(c) The telemarketer uses a process to prevent telemarketing to any telephone number on any do-not-call list or registry referenced in this subdivision; maintains the current, quarterly version of the list or registry; and maintains records documenting this process.

(d) The telemarketer monitors and enforces compliance with the procedures established under subparagraph (a).

(e) The telemarketer uses a version of the do-not-call list obtained no more than 3 months prior to the date that any call is made.

(f) Any subsequent call otherwise violating this subdivision is not part of a pattern of calls made in violation of this subdivision and is the result of a good faith error.

4 Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.

5 Effective Date. This act shall take effect 60 days after its passage.

2003-1537s

#### AMENDED ANALYSIS

This bill prohibits telemarketers from calling customers who have placed their names on a federal do-not-call registry or, until a federal registry is available, a state do-not-call list maintained by the Direct

Marketing Association. The bill includes certain exemptions from the do-not-call requirements and establishes civil penalties for telemarketers' non-compliance.

**SENATOR ESTABROOK:** Thank you Mr. President. I move HB 109-FN ought to pass with amendment. House Bill 109 prohibits telemarketers from calling customers who have placed their names on the Federal Trade Commission's Do-Not-Call Registry and is similar to the provisions of SB 38, already adopted by this body. The committee amendment changes HB 109 to reflect the Senate's position on this important topic. Over 85 percent of New Hampshire's citizens support state Do-Not-Call legislation. They want an end to unsolicited intrusions into their homes using a service that they are paying for. New Hampshire's citizens want control over potentially fraudulent calls, many targeted at seniors. The Interstate Cooperation Committee asks your support in affirming the Senate position by adopting HB 109 as amended. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**Senator Foster Rule #42 on HB 109-FN.**

**HB 633-FN**, establishing the interstate compact for adult offender supervision. Interstate Cooperation Committee. Ought to pass, Vote 3-0. Senator Clegg for the committee.

**SENATOR CLEGG:** Thank you Mr. President. I move HB 633 ought to pass. The bill establishes the interstate compact for adult offender supervision within New Hampshire and is a continuation of the current compact that has been in place since 1937. Currently New Hampshire has 408 parolees from out-of-state that we are supervising and 605 parolees who are being supervised elsewhere. In checking with legal counsel, the language contained in this compact is standard. The Interstate Cooperation Committee asks for your support in the adoption of this legislation. Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

### **MOTION TO REMOVE FROM THE TABLE**

Senator Peterson moved to have **HB 278** taken off the table.

**Adopted.**

**HB 278-FN**, relative to certain acts of sexual assault.

**SENATOR PETERSON:** Thank you Mr. President. I yield to Senator Foster.

**SENATOR FOSTER:** Thank you Mr. President. I move HB 278 ought to pass. House Bill 278 modifies the criminal laws relevant to so-called statutory rape. Our laws provide that a child cannot legally get consent to sexual relations until the age of 16. If it would be otherwise be a consensual act as reported, the older child, even if just a year or a few months older, can be charged with a class B felony. If convicted, would have to register as a sex offender for the rest of his or her life. The committee received testimony of just this sort of prosecution. House Bill 278 amends the law to provide that if a perpetrator is no more than four years of age



older than the 13 to 16-year-old teen, he or she would be charged only with a Class A misdemeanor rather than Class B felony. Acts that would constitute aggravated felonious sexual assault, like where force is involved, remain felonies. Only acts which would otherwise be viewed as consensual, but for the age of the persons involved, would be covered by this change in the law. The Judiciary Committee recommends HB 278 for adoption and asks for your support. Thank you.

**Question is on the motion of ought to pass.**

### **MOTION TO TABLE**

Senator Gatsas moved to have **HB 278-FN** laid on the table.

**Motion failed.**

**Question is on the motion of ought to pass.**

**Adopted.**

**Ordered to third reading.**

**HB 198**, relative to the police powers of law enforcement officers called to respond to incidents in other jurisdictions. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Roberge for the committee.

**Senate Judiciary**

**May 7, 2003**

**2003-1523s**

**09/10**

### **Amendment to HB 198**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to the police powers of law enforcement officers called to respond to incidents in other jurisdictions and relative to the authority of the Maine marine patrol to perform certain law enforcement functions in the waters of New Hampshire.

Amend the bill by replacing all after section 1 with the following:

2 Purpose. Section 3 of this act is enacted for the purpose of enhancing the ability of Maine and New Hampshire law enforcement authorities on the Piscataqua River and Portsmouth Harbor to investigate potential terrorist activities by extending the authority of any duly certified Maine marine patrol officer to the waters of New Hampshire on the river and harbor, for the limited purpose of responding to and investigating suspected terrorist activities on the water.

3 New Section; Maine Marine Patrol. Amend RSA 270 by inserting after section 12-d the following new section:

270:12-e Maine Marine Patrol.

I. Any member of the state of Maine marine patrol who, in the course of patrolling the waters of the Piscataqua River or Portsmouth Harbor, observes activity that the officer reasonably suspects may result in loss of life, widespread injury, or widespread or severe property damage, shall have the same authority to enter New Hampshire to investigate, detain, and execute an arrest as any member of the New Hampshire marine patrol.

II. Whenever any member of the Maine marine patrol is engaged in New Hampshire in carrying out the purpose of this section, such member shall have all the same privileges and immunities as members of the New Hampshire marine patrol, in addition to privileges and immunities available under Maine law.

III. The provisions of this section shall not be valid unless the state of Maine enacts legislation that is substantially the same as this section and gives reciprocal authority to any member of the New Hampshire marine patrol.

4 Authority to Make Arrest; Boat Operators. Amend RSA 614:1 to read as follows:

614:1 Authority Granted to Make Arrest. Except as provided in RSA 614:1-a, any member of a duly organized state, county, or municipal peace unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest him *or her* on the ground that he *or she* is believed to have committed a felony or to have driven a motor vehicle *or operated a boat* while under the influence of intoxicating liquor *or a controlled drug* in such other state, shall have the same authority to arrest and hold such person in custody as has any member of any duly organized state, county, or municipal peace unit of this state to arrest and hold in custody a person on the ground that he *or she* is believed to have committed a felony or to have driven a motor vehicle *or operated a boat* in this state while under the influence of intoxicating liquor *or a controlled drug*.

5 Reciprocity Requirement; Boat Operators. Amend RSA 614:1-a to read as follows:

614:1-a Reciprocity Requirement. The provisions of RSA 614 shall not authorize members of state, county or local peace units from other states to pursue persons driving or suspected of driving *a motor vehicle or operating or suspected of operating a boat* under the influence of intoxicating liquor *or a controlled drug* into New Hampshire unless the state of origin of such peace unit accords reciprocal authority to pursue such persons to members of duly authorized New Hampshire state, county or local peace units.

6 Fresh Pursuit; Boat Operators. Amend RSA 614:5 to read as follows:

614:5 What Constitutes Fresh Pursuit. The term "fresh pursuit" as used in this subdivision shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony or who is reasonably suspected of driving a motor vehicle *or operating a boat* while under the influence of intoxicating liquor *or a controlled drug*. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

7 Effective Date. This act shall take effect upon its passage.

2003-1523s

#### AMENDED ANALYSIS

This bill grants the authority to make arrests and full police powers to any law enforcement officer who is requested by certain authorities to respond to a mass critical incident in a jurisdiction other than the jurisdiction which employs such law enforcement officer.

The bill also authorizes members of the Maine marine patrol to perform certain law enforcement functions on the Piscataqua River and Portsmouth Harbor, provided that members of the New Hampshire marine patrol are extended reciprocal authority. It also authorizes an out-of-state peace officer to enter this state and make an arrest for driving under the influence of a controlled drug and for boating while under the influence of intoxicating liquor or a controlled drug.

SENATOR ROBERGE: Thank you Mr. President. I move HB 198 ought to pass with amendment. This legislation was requested by the Attorney General in response to a proposed agreement with the state of Maine regarding the ability to respond to emergencies in the Piscataqua River. This legislation goes into effect only if identical legislation is adopted by the state of Maine. The provisions would allow local law enforcement officers who are called to an emergency to be able to respond in other jurisdictions. The Judiciary Committee recommends ought to pass as amended. Thank you.

SENATOR BARNES: Senator Roberge, this is just the state of Maine?

SENATOR ROBERGE: Yes, just between New Hampshire and Maine.

SENATOR BARNES: What about Massachusetts? Should it?

SENATOR ROBERGE: I don't think so.

SENATOR BARNES: It shouldn't cover Vermont either?

SENATOR ROBERGE: No.

SENATOR BARNES: Thank you.

SENATOR LARSEN: Senator Roberge, in looking at the hearing report, it appears that New Hampshire's border, as it reaches Vermont, the Attorney General responded to questions regarding the Connecticut River, that our border includes the entire river to the banks of Vermont so that issue of border patrol, at least on the river, within the river, is not a concern on our border with Vermont. Do you recall that from the testimony?

SENATOR ROBERGE: Yes I do.

SENATOR LARSEN: Thanks.

SENATOR SAPARETO: Thank you Mr. President. I would like to remind members of the Senate also that this will only take effect if a reciprocal agreement through Maine were allowed. That is what the stipulation is upon. That is a very important piece of this bill.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 464-FN**, establishing a criminal penalty for facilitating a drug or underage alcohol house party. Judiciary Committee. Inexpedient to legislate, Vote 5-0. Senator Sapareto for the committee.

SENATOR SAPARETO: Thank you Mr. President. Mr. President, I would ask the indulgence of the Senate if they could please vote down this inexpedient to legislate so that we could substitute a refer motion due to changes of this morning.

**Motion failed.**

**Senator Sapareto moved to rerefer.**

**Adopted.**

**HB 464-FN is rereferred to committee.**

**HB 524-FN**, relative to the annulment of certain domestic violence offenses. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

**Senate Judiciary**  
**May 5, 2003**  
**2003-1491s**  
**04/09**

**Amendment to HB 524-FN**

Amend the title of the bill by replacing it with the following:

AN ACT requiring notice to the complainant of a petition for annulment of a domestic violence conviction.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Annulment of Criminal Records; Notice to Complainant. Amend RSA 651:6 by inserting after paragraph IX the following new paragraph:

IX-a. When a petition for annulment of a conviction pursuant to RSA 173-B:9, III is timely brought, the department of corrections shall cause the sheriff of the county in which the complainant was last known to reside, to serve the complainant with a copy of the petition for annulment. In addition to any other costs under this section, the petitioner shall reimburse the sheriff for costs related to service of process as set forth in RSA 104:31. In the event that the department is unable to locate the complainant, the report filed with the court pursuant to this section shall certify that the department made a good faith effort to locate the complainant, but was unable to do so.

2 Department of Justice; Rights of Criminal Victims. Amend RSA 21-M:8-k, II(d) to read as follows:

(d) The right to be notified of all court proceedings, *including annulment proceedings*.

3 Effective Date. This act shall take effect January 1, 2004.

**2003-1491s**

**AMENDED ANALYSIS**

This bill requires that a complainant in a domestic violence proceeding receive notice of a petition for annulment filed by the defendant.

SENATOR CLEGG: Thank you Mr. President. I move HB 524 ought to pass with amendment. The bill provides that when a petition for annulment of a conviction is made, the department shall make a good faith effort to notify the victim in the case at the victim's last known address. All costs for providing this service shall be borne by the petitioner seeking annulment, thus avoiding any fiscal impact. The Judiciary Committee recommends that you support this bill. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 620-FN**, providing a right to counsel for indigent parents and other protections in cases involving the guardianship of minors. Judiciary Committee. Rerefer to committee, Vote 4-1. Senator Sapareto for the committee.

SENATOR SAPARETO: Thank you Mr. President. Mr. President, I move that HB 620-FN be rereferred to committee. This legislation sought to provide a right to counsel for indigent parents in cases involving the

guardianship of minors. Conflicting testimony received during the hearing led the committee to feel that the bill is not appropriately written and given the fiscal note, the time is not right to pass this legislation. By rereferring the bill, the parties involved will have more time to work out their differences of opinion. Thank you.

**Adopted.**

**HB 620-FN is rereferred to committee.**

**HB 630-FN**, relative to enhanced penalties for assault on law enforcement officers, firefighters, emergency medical care providers, and national guard members. Judiciary Committee. Rerefer to committee, Vote 4-1. Senator Sapareto for the committee.

SENATOR SAPARETO: Thank you Mr. President. Mr. President, I move that HB 630-FN be rereferred to committee. This bill sought to extend the terms of imprisonment for persons who assault an on-duty law enforcement officer, firefighter, emergency medical care provider and member of the national guard. Some members of the committee were concerned with the definition of simple assault and wanted to amend this statute. In order to have more time to address this matter, the Judiciary Committee recommends that the bill be rereferred and asks your support. Thank you.

**Adopted.**

**HB 630-FN is rereferred to committee.**

**HB 240**, establishing a committee to study ways to prevent suicide among young people in New Hampshire. Public Institutions, Health and Human Services Committee. Ought to pass with amendment, Vote 4-1. Senator O'Hearn for the committee.

### **Public Institutions, Health and Human Services**

**May 7, 2003**

**2003-1534s**

**05/10**

#### **Amendment to HB 240**

Amend the bill by replacing sections 2-5 with the following:

##### **2 Membership and Compensation.**

I. The committee shall be comprised of 3 members of the house of representatives, appointed by the speaker of the house of representatives.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

##### **3 Duties. The committee shall:**

I. Collect and review information relative to the rate and cause of suicide among children and adolescents in New Hampshire.

II. Examine ways to develop and enhance state programs to reduce the incidence of suicide among young people, including the possibility of creating a local television campaign and establishing crisis hotlines for teen suicide prevention.

III. Develop a plan to create greater coordination among existing suicide prevention programs and initiatives.

IV. Research federal and private grants that may be available to the state in augmenting its suicide prevention programs.

**4 Chairperson; Quorum.** The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named committee member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the house clerk, the governor, and the state library on or before November 1, 2003.

SENATOR O'HEARN: Thank you Mr. President. I move ought to pass with amendment on HB 240. Suicide is the second leading cause of death among teens in New Hampshire, according to a 1998 report to the Governor. In addition, between 1998 and 2000 over 1,400 residents twenty-four years old or younger, were hospitalized or seen in emergency rooms for attempted suicide. The committee amended the bill by adding to the committee's duties, a plan to develop greater coordination among assisting suicide prevention programs and allow the House members to do the study. A study of the most effective suicide prevention methods for New Hampshire will provide important outcomes. The Senate Public Institutions, Health and Human Services Committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 663-FN-A-L**, relative to county and state funding of long-term care medicaid programs. Public Institutions, Health and Human Services Committee. Ought to pass, Vote 5-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you Mr. President. I move ought to pass on HB 663. The framework established by SB 409, which envisions the state and counties sharing the funding responsibility for non-federal portions of Medicaid programs will sunset at the end of June. After five years, it is clear that county property taxpayers, and particularly those in the northern and western part of the state, have provided more than their fair share as predicted by 409, perhaps by as much as \$80 million. According to one study, county taxpayers cannot continue to fund almost 50 percent of the Medicaid costs. House Bill 663 will establish a Medicaid Quality Enhancement Program authorizing the Department of Revenue Administration to collect 6 percent assessment on fees and 6 percent assessment fee on the gross revenues of nursing home providers, mental health providers and the developmentally disabled providers. The monies will be matched by federal funds and an enhanced amount will be returned to the providers, based on their Medicaid population. The assessment will produce an estimated \$12 million surplus for county nursing homes and a \$6 million surplus respectfully, for developmentally disabled and mental health providers. House Bill 663 includes the sunset provision stipulating that in an event of federal approval, if an assessment fee is not granted, the current county of obligation will continue for one more year with alternative funding sources are identified. Provided taxes are contingent on federal approval, it will not go forward if the combined level of state and county funding to nursing homes in the state budget, apart from the assessment surplus falls below current levels. The bill also extends the moratorium on nursing home beds until 2006 and adds a county official to the CON Board and creates a County State Finance Commission that will oversee and manage the relationship between state and county governments. House Bill 663 offers critical relief to county taxpayers provided as well as their clients. The committee recommends ought to pass. The committee also recognizes that

further work is needed to minimize the financial impact of the bill on nursing homes that are 100 percent private pay, at homes that have low numbers of nursing beds, and encourages the department industry and federal officials to continue to pursue financial protection for those facilities. The Senate Public Institutions, Health and Human Services Committee will be able to assist the Senate Finance Committee in ways deemed impossible. I thank you Mr. President for allowing me to speak.

SENATOR ESTABROOK: Thank you Mr. President. This bill has come forward as a successor to SB 409. A measure to fill the void of the expiring Medicaid cost-sharing arrangement. Most of its provisions are matters of financial policy to be dealt with most appropriately in the Finance Committee. My vote to send this along to Finance was to promote examination of these financial provisions including resolution of the pressing issues of the effects of the assessment of non-Medicaid nursing home residents. The outlook for the federal waiver necessary to implement the proposed assessment on developmental disabilities and mental health agencies is not bright. I trust that the committee will create alternative provisions to prevent further deterioration of these services. With regard to healthcare policy, the focus of SB 409 was on promoting alternatives to nursing home care. That focus has been lost in HB 663. The Long-Term Care Assistance Fund established in 409 to fund service link as a coordinating mechanism for mid-level and home care services, has been depleted and the budget does not include sufficient funds to continue these services. One step the Finance Committee could take to return the focus to nursing home alternatives would be to raise the cost caps for these alternative services. Why we would want to limit home care services to 33 percent of the cost of nursing home care when even at a 50 percent cap, we would save taxpayer money and improve seniors quality of life. I say, let's send 663 to the Senate Finance Committee for further work on these issues. Thank you Mr. President.

SENATOR LARSEN: Senator Estabrook, it is my understanding from the Health and Human Services Committee report that in fact that was a request of the AARP that, that cap be changed and increased. Was there actually an amendment from AARP to do that or was it a simply suggested change?

SENATOR ESTABROOK: There was not a formal amendment. I had brought forth four pieces of the bill that I thought needed to be amended, but what we decided as a committee, is that those notes would be just passed along with the bill to Finance for their consideration. Thank you.

Senator O'Hearn offered a floor amendment.

Sen. O'Hearn, Dist 12

**May 14, 2003**

**2003-1635s**

**10/01**

### **Floor Amendment to HB 663-FN-A-LOCAL**

Amend the bill by inserting after section 13 the following and renumbering the original section 14 to read as 15:

14 Personal Care Services; Consumer Choice. Amend RSA 161-I:3 to read as follows:

161-I:3 Consumer Choice. An eligible consumer in need of personal care services shall have the option to receive personal care services, including consumer-directed services, through a home health agency or other quali-

fied agency. An individual not eligible for department programs shall have the option to receive personal care services, including consumer-directed services, through a *personal care services provider*; a home health care provider, *other qualified provider* or other facility licensed under RSA 151, or through a private arrangement between individuals. Such choice shall be subject to those limitations imposed by federal and state laws, rules, and regulations.

**2003-1635s**

### AMENDED ANALYSIS

This bill:

- I. Establishes a statutory county-state finance commission.
- II. Extends and amends the payment provisions for counties relative to the nonfederal share of nursing home facility services.
- III. Adds a county official to the health services planning and review board.
- IV. Establishes a community mental health provider assessment, a nursing facility quality assessment, and a developmentally disabled provider assessment.
- V. Clarifies consumer choice in personal care provider services.

SENATOR O'HEARN: Thank you Mr. President. I have a floor amendment if it is the appropriate time. The amendment will clarify that privately paying consumers can access the greater choice in cost savings that are currently available through the home and community based waiver for the elderly and chronically ill clients through the use of consumer directed personal care services provided by the qualified provider. This amendment would help alleviate the direct care provider shortage by supporting the development of cost-effective alternatives for all people in the state, including those who can afford to pay for their own care. I hope that the Senate can support the amendment.

SENATOR MARTEL: Thank you Mr. President. I even have background music Mr. President. I have a brief question for Senator O'Hearn. This amendment does not cover possible businesses that may fall through the cracks such as the Lake View Home. This is primarily the AARP amendment that you are offering?

SENATOR O'HEARN: No. No. This was a suggestion to me from the DD Council as well as the area agencies, so that we could have some personal care people coming in and taking care of people at home.

SENATOR MARTEL: I got it. Thank you. Thank you very much.

**Recess.**

**Out of recess.**

**Senator O'Hearn withdrew her floor amendment.**

**Question is on the committee report of ought to pass.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

### MOTION TO REMOVE FROM THE TABLE

Senator Green moved to have **HB 690-FN** taken off the table.

**Adopted.**



**HB 690-FN**, relative to agricultural crop damage.

**Question is on the adoption of the committee amendment (1367).**

SENATOR GREEN: Thank you Mr. President. Last week when this bill came in, I had requested that it be put on the table for an amendment. You will see it being handed out. The amendment to the bill is a very simple amendment. Be careful when it is simple, I know. But it is very simple. It adds a new section which has words in it. This is a bill that deals with, relative to agricultural crop damage and relative to agricultural liming materials. The liming materials is where the amendment comes in. We add along the language, as it is defined, means that the material composed largely of seashell fragments, which is in the current law. The new words is "eggshell fragments and calcium carbonate". It just adds the eggshells to the seashells in the current statute. That is what the amendment is. The amendment has been passed out, hasn't it?

**Question is on the adoption of the committee amendment (1367).**

**Amendment adopted.**

Senator Green offered a floor amendment.

Sen. Green, Dist. 6

**May 14, 2003**

**2003-1646s**

**08/10**

#### **Floor Amendment to HB 690-FN**

Amend the title of the bill by replacing it with the following:

AN ACT relative to agricultural crop damage and relative to agricultural liming materials.

Amend the bill by replacing all after section 1 with the following:

2 Agricultural Liming Materials. Amend RSA 431:24, V to read as follows:

V. "Marl" means a granular or loosely consolidated earthy material composed largely of seashell fragments, *eggshell fragments*, and calcium carbonate.

2 Effective Date. This act shall take effect January 1, 2004.

**2003-1646s**

#### **AMENDED ANALYSIS**

This bill provides civil and criminal penalties for intentionally damaging legal crops.

This bill also permits the use of eggshells as an agricultural liming material.

SENATOR GREEN: I will not speak again to it Mr. President, but I would request that the Senate add to it, the following amendment which they are currently receiving. Thank you.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

SENATOR PETERSON: Senator Green, relative to the bill as amended now, and specifically the first amendment, as I read this, it appears that if a couple of young people were driving their jeep at night, and went off to a corn field and created more than a thousand dollars of damage, based upon three times the value of the crop that was destroyed, they would be guilty of a Class B felony? Is that correct?

SENATOR GREEN: I didn't make that amendment, I don't know. That is not my amendment. The eggshells, being in the field, would be part of what was tilled in the field. The answer to your question is, that whoever put the amendment in, put that penalty in, which has nothing to do with this amendment.

SENATOR CLEGG: Thank you Mr. President, in the amendment it says that a person who violates the provisions, paragraph I, should be guilty of a Class B felony, if the actual loss or cost of the repair is \$10,000 or more. I am looking at the amendment that was adopted. Most of us don't have the amendment, we only have the original bill as amended by the House. The Senate amendment raised it to \$10,000 or more or a misdemeanor if the actual loss or cost is less than \$10,000. I don't know if that answers your question?

SENATOR PETERSON: Thank you Mr. President. I appreciate the clarification by Senator Clegg.

SENATOR FLANDERS: Senator Green, which came first the chicken or the eggshell?

SENATOR GREEN: Senator Flanders, I suspect that the Senators came first?

SENATOR FLANDERS: Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 210-FN-A**, relative to passenger tramway registration fees and relative to carnival or amusement ride fees. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Morse for the committee.

**Senate Transportation**

**May 8, 2003**

**2003-1560s**

**03/01**

### **Amendment to HB 210-FN-A**

Amend the bill by replacing section 1 with the following:

1 Passenger Tramway Registration Fees. Amend RSA 225-A:16 to read as follows:

225-A:16 Fees. The application for registration shall be accompanied by the applicable annual fees [~~provided, however, that when an operator operates either a chair lift, skimobile, gondola, or aerial tramway during both a summer and winter season, the annual fee shall be 1 1/2 times the annual fee for the respective lift~~] **to cover the costs of administering this chapter**. The fees for registration shall be set by the board by rule adopted pursuant to RSA 541-A.

Amend the bill by replacing section 3 with the following:

3 Passenger Tramway Registration Fees; Expiration and Adoption of Rule. Notwithstanding any other provision of law, the passenger tramway safety board rule adopted pursuant to RSA 225-A:16 setting passenger tramway registration fees shall expire June 30, 2003. The passenger tramway safety board shall set new passenger tramway registration fees pursuant to RSA 225-A:16, as amended by this act. In developing the fees required by RSA 225-A:16, the passenger tramway safety board and the commissioner of safety shall act jointly to assure that the fees cover the costs of administering RSA 225-A.

2003-1560s

## AMENDED ANALYSIS

This bill:

I. Provides that passenger tramway registration fees shall cover the costs of administering the passenger tramway safety laws.

II. Requires that the commissioner of safety establish fees for carnival or amusement ride decals.

SENATOR MORSE: Thank you Mr. President. I move HB 210 ought to pass with amendment. House Bill 210 is a result of a summer study committee. House Bill 210 attempts to address the issue of public safety elevating the level of inspection services to amusement parks, passenger tramways, and ski areas. The bill assigns additional personnel from the Department of Safety to inspection duties and provides that all costs associated with administering the safety laws be covered by the passenger tramway registration fee. The Transportation Committee recommends HB 210 ought to pass as amended and asks for your support. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 419**, establishing a committee to study issues related to the management of railroads operating with leases on state property. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Flanders for the committee.

**Senate Transportation****May 8, 2003****2003-1542s****06/10****Amendment to HB 419**

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study the bureau of rail and transit in the department of transportation and issues related to the management of railroads.

Amend the bill by replacing section 1 with the following:

1 Committee Established. There is established a committee to study the bureau of rail and transit in the department of transportation and issues related to the management of railroads.

Amend the bill by replacing section 3 with the following:

3 Duties. The committee shall study the bureau of rail and transit in the department of transportation and issues relating to the management of railroads.

**2003-1542s**

## AMENDED ANALYSIS

This bill establishes a committee to study the bureau of rail and transit in the department of transportation and issues related to the management of railroads.

**MOTION TO TABLE**

Senator Kenney moved to have **HB 419** laid on the table.

**Adopted.**

**LAI D ON THE TABLE**

**HB 419**, establishing a committee to study issues related to the management of railroads operating with leases on state property.

**Senator Foster Rule #42 on HB 419.**

**HB 531**, relative to off-site improvements imposed on applicants to a planning board. Transportation Committee. Inexpedient to legislate, Vote 4-1. Senator Martel for the committee.

**SENATOR MARTEL:** Thank you Mr. President. I move HB 531 inexpedient to legislate. This bill would provide that a planning board, in the course of site planning or subdivision review, would have the authority to require a developer be responsible for the payment of the cost of any on-site improvements in addition to the developer's proportional share of off-site improvements. The adoption of or failure to adopt an impact fee ordinance will have no affect on the planning board's authority. In committee we heard testimony that suggested HB 531 would send us back to the "horse trading" days before formulas were used to determine a developers share of impact fees. Local planning boards had the ability to hold up projects with unfair and unreasonable expectations. The Transportation Committee is concerned that the broad language of the bill will lead to varying municipal interpretations and a strong potential for misuse. That being said we recommend the state not get involved through legislative action, and allow our towns and cities to address these issues at the local level. Please join in voting HB 531 inexpedient to legislate. Thank you.

**SENATOR BELOW:** Thank you Mr. President. I rise in strong opposition to the committee report of inexpedient to legislate. I think that there is merit to this legislation. I don't think that we should be killing it here today, and we should either be passing it or rereferring it or tabling it. I think that this is a very important issue to our communities and taxpayers of this state, and the businesses of this state, so I think that this merits some consideration, so I am going to take a little time to explain the issue here. Just a little background. I am here today because I am a successful real estate developer. I was engaged in some real estate in downtown Lebanon that went through the planning process. The projects were approved on the condition that we undertake certain off-site improvements related to our project that were necessitated by our project and the success of that enables me to serve here in the Senate. I have also served on our local planning board where we grappled with the issue of the impact of development and what is the appropriate way to pay for that? I also served on a committee that reviewed, or impact the ordinance that the city of Lebanon used to have and subsequently repealed because of the difficulty in administering it and offering that. Prior to the early nineties, or I should say prior to a recent decision in November of 2000 by the Supreme Court called *Simonsen v. Town of Derry*, prior to that, there was a common law recognition that was established from earlier cases in the 80's by the state Supreme Court. The planning boards had the authority to condition a site plan approval or a subdivision on a developer, the owner of the property, paying for certain off-site improvements that were necessitated, that is required by that development. Ei-

ther pay for it or take the cost or to pay for their proportionate share. And if the improvements were to serve other than that project, then the court had found that you could only ask them to pay a proportion of their fair share of that cost. In *Simonsen v. Derry*, the Supreme Court overturned that common law that had been in place for well over a decade. In spite of the fact that the legislature went in and enacted or authorized the enactment of impacting the ordinances, expressly stated, and you can actually find this statement on the first page of the bill, section one of the bill, actually the very first sentence is a request of the existing law. It says, "Neither the adoption of an impact fee ordinance nor the failure to adopt such an ordinance, shall be deemed to affect the existing authority of a planning board over a subdivision or site plan review, except for the extent expressly stated in such an ordinance." What the court found in *Simonsen v. Derry* was in spite of that expressed language, to preserve existing authority for planning boards, in spite of that express statement, and in spite of any lack of express statement that there was an intention to overturn the common law established in previous cases, such as one called *New England Brickmaster v. Salem*, that in spite of that provision, that in fact the legislature by authorizing in fact the ordinances, did remove the authority for planning boards to condition approval of subdivisions or site plans on any off-site improvements. It is interesting enough that when in fact when these ordinance's were authorized, it was part of a section of the law called "innovative land use control". It talked about innovative land use controls may include, but are not limited to, a whole series of things such as environmental characteristics zoning, inclusionary zoning, cluster development, transfer of development rights, village plan alternative subdivision, impact fee. I think that context alone would suggest that the impact fee ordinances were not being set out to be exclusive means by which to have developers pay for costs that they caused, but rather that it was an innovative way to allow communities to take a broader look, if they first adopted the capital improvement plan. Second, conducted a study to figure out how a development would impact over the long run. The need in the community for new schools or the public library, a public recreation facility, things of that nature. So when communities have development ordinances, and if it is something like less than 10 percent of our communities in the state have done this because it is a complicated, somewhat extensive process. We have this whole study that tries to look at, for each additional home, how much it is going to cost to add more school capacity sometime in the future. Then you collect those fees, then you figure out those fees, you collect them, and you have to keep them all in separate accounts for the different purposes and then spend them within six years. Generally, the impact that the ordinance's address are things that are in a community capital improvement plan. But when we have development, there is often requirements for improvement to public facilities that are in immediate proximity to that development, such as if you are building a shopping center, you might need a turning lane into that shopping center or a traffic light to turn into that shopping center safely. If you are doing a residential development and you have a community where the standard is to have sidewalks and curbs along the street, along the road frontage, the community has already paid for sidewalks and curbs and all of its existing neighborhoods, you might expect, as our planning board did, when somebody develops a new residential parcel on the edge of town, that they put in sidewalks along their road frontage so that pedestrians can safely walk on a busy road from that resi-

dential development to a neighborhood school or to a neighborhood park. Under the *Simonsen v. Derry* case, planning boards no longer have that authority. It has been stripped away from them. So this legislation was brought forward by Representative Pierre Bruno as the prime sponsor and couple of other Representatives to try and correct that situation. To try to address the problem of improvements that are necessitated by a particular development. In fact, that is the language that you see in the bill. The concern that we heard in committee is that folks like the Associated General Contractors, was that this takes us back to the days before the impact fee ordinance provision and would allow communities to do sort of anything they want, in terms of getting developers to pay for their costs of schools and municipal facilities and so forth. I think that the sponsors of the bill and the Municipal Association clearly expressed that their interest, their intent, was to try and address those improvements that are site specific, that are necessitated, that are required by a particular project, that usually aren't even covered by impact fee ordinances. Usually you don't anticipate something that is specific to a project, such as a turn-way or a culvert that needs to be put across the road just to take away increased drainage from that particular development. I think that it is important to look at the case. I imagine that some of the committee members are going to disagree with me and I am afraid that I am going to get cut off on debate if I don't go ahead and explain it all right up front. So let me do this. In *Simonsen v. Derry*, the Superior Court had granted summary judgement in favor of the plaintiff. The developer who had been approved to expand a nine-hole golf course to an 18-hole golf course in Derry and they required them to contribute \$7,500 for off-site road improvements necessitated by the increased traffic. In that decision, the court upheld that summary judgement. When they looked at that decision they talked about the towns authority to "require payment for off-site improvements." That is a direct quote. They went on and talked about the issue being whether the RSA 674:21 that created the authority for impact fee ordinances "represents the sole authority for conditioning the approval for site plan upon the applicants payment of money for improvement." They observed that prior to the 1991 enactment of that ordinance, the court had held that we, the planning boards had the authority to condition the approval of a site plan upon payment for off-site road improvement. In that context, they had authorized that but only for improvements that are necessitated that are required by that particular development. They point out "that the town argued that the provision in RSA 674:21 which is the first part of the paragraph of the bill, that failure to adopt and impact the ordinance does not affect existing authority of a planning board over-site plan review. It preserves its authority under New England Brickmaster to condition the approval of the plaintiffs site plan upon the payment of a fee for off-site road improvements necessitated by the proposed development. The plaintiffs counter that this new RSA replaced the framework established in New England Brickmaster. The long and short of this is that the court essentially found, or they think that the statute that spoke, the legislature intended to preempt the common law rule set out in New England Brickmaster in spite of the plain language that it did not affect existing authority. So what the court did was to overturn the common law rule in the New England Brickmaster. What was that common law rule in New England Brickmaster? What they talked about repeatedly in that case was the authority for a planning board to condition site plan approval on off-site improvements. They site in a case

that originated in my district, the town of Plainfield land vest, in which the planning board conditioned subdivision approval, which I think was a large residential development at the end of a dirt road, on the developer improving the road up to the town's safety standards. In that previous case, they said that the board has that authority and they essentially affirmed that authority in the Brickmaster case. It is interesting because what one of the concluding points in looking at the statute, and the authority that planning boards had, was they said, the legislature intended to give planning boards the tools to do their jobs. It follows that the legislature intended to grant planning boards the authority to condition approval on the funding of off-site improvement at the subdivision stage, the site plans stage or both, as the situation warrants. That is the common law rule that the court overturned in *Simonsen v. Derry*. Now the problem is that that means that most of the planning boards in this state do not have the authority to say you are going to develop a shopping center, you should pay to put in a traffic light, a turning lane and the culvert that is necessitated by that development. Gary Abbot, the executive vice president of Associated General Contractors recognized that in both his verbal testimony and his written testimony that there may in fact be a problem. In conversations with me, he agreed that planning boards maybe should have that authority when it is not covered or wouldn't logically be covered by an impact fee ordinance, but there is this clear proximity or this clear connection. In his written testimony he said, "AGC of New Hampshire is opposed to this bill as written. The Association would be willing to work with the committee to make this bill more specific to address any identified problems." He said something very similar in his verbal testimony. The point here is that it would be a mistake to vote this bill inexpedient to legislate because this is an issue that needs to be addressed. If we voted inexpedient to legislate, according to our own rules, "no bill, the subject matter of which has been indefinitely postponed or made inexpedient to legislate in the Senate, in the first year session, shall be admitted into the second year session, whether it is a bill, amendment, committee of conference report or any other manner." Now we may hear that there is a House committee for a bill that we sent over from the Senate to create a study committee that can look at this issue, but if they look at the issue and come up with a recommendation, even if all of the interested parties agreed, we couldn't take it up in our next session, if we adopt inexpedient to legislate; therefore, I would conclude that if you believe that the taxpayers of your communities should pick up the tab for work on public streets that are necessitated by private developments, that would not otherwise even be incurred if there wasn't a private development, then vote for this bill as inexpedient to legislate, and tell your taxpayers that you are going to pick up the costs of the development. Your only alternative is to turn down the approval or you could develop and impact the ordinance which may or may not actually solve the problem at some cost and difficulty to the community. If you believe that taxpayers should pay for culverts, sidewalks and other improvements that benefit a specific developer, then go ahead and vote for inexpedient to legislate. If on the other hand, you believe that there is an issue here that we should try to find at least a reasonable balance, then I would urge you to defeat inexpedient to legislate and either rerefer this bill or at the very least, lay it on the table, which does kill it for this session, but it doesn't preclude us from trying to address the issue in the next session. Thank you Mr. President.

SENATOR CLEGG: Thank you Mr. President. The previous speaker made money as a developer, so have I, I still do. Let me explain to you. one: We are going to hear how the House is going to add this to their study committee and there is a thought that we can't bring it in. If two-thirds of this body wants to bring something in, they have that right to do so, I wouldn't let that worry me. Let's talk about impact fees and what happens in different towns. Senator Below stated that he was a developer in Lebanon. I don't know if they have an impact fee schedule or not. But if they don't, and I decide to go and be a developer and compete with him, what is going to happen? Is everybody in his town going to say that this is a homeboy, let's get this out-of-towner out of here? Let's charge him so much that he can't compete? If you think that scenario is not a good one, let me tell you that it is. It has happened all of the time in the state of New Hampshire until we finally said if you don't have an impact fee schedule and you don't have a master plan, you can't go and rape a developer. There was also a decision that said that if you take the money from these developers, and you don't use it within a certain period of time for the purposes that you took it, you have to give it back to them. Here we are going back to the horse and buggy days, in my opinion, with this bill. It says that when I go into a community, they can charge me whatever I want...they can charge me for whatever they want, and I can't do anything other than say forget it, I am out of here. That is what it does. Is it too tough to put in an impact fee schedule? Well if it is not too tough to figure out how much you want to charge me for all of the improvements, it shouldn't be that much harder to just do a total fee, a total schedule, and say to people as they come in, by the way, here is our impact fee ordinance, and here is what it is going to cost you for every house, for every commercial building, for our police, fire and schools and our library. And oh, by the way, since you are bringing in 300 cars a day, here is what you are going to need to do to improve the road. A little planning by the community makes it simple. Makes it easy. What we want to do is just say, well regardless, this bill says that we will treat everybody the way that we want to treat them as they come in. I firmly support inexpedient to legislate. Let's not go back to the horse and buggy days. Remember, if the House comes through with something decent, we have the right to take it up. If somebody wants to challenge whether we do, it only takes a two-third vote to allow the subject back in next session. Thank you.

SENATOR KENNEY: Just to reiterate what the majority leader indicated. I do support inexpedient to legislate on HB 531. Now in speaking with the House Municipal and County chairman, they have a bill that is called...that passed out of the Senate. It is SB 157 establishing a committee to study the vesting of developmental rights, in that they are proposing an amendment. The study committee shall study the vesting of development rights in light of the recent New Hampshire Supreme Court decision in *AWL Power Incorporated v. the City of Rochester* issued December 9, 2002 and in *Monahan-Fortin Properties v. the Town of Hudson* issued December 24, 2002, and the *Simonsen case v. Derry* case regarding the stimulus use of, excuse me, simultaneous use of growth management ordinances and impact fees under RSA 674:21. So what we are trying to say is that when it comes to off-site development rights in the case of *Simonsen v. Derry*, is that there are some issues to be looked at. Myself, as Chairman and the Transportation Committee as a whole, excluding one member, would support this amendment if it came to the Senate in the form of SB 157 so we could further look at off-site



developments and impact fees and other associated issues that come before us in regard to subdivisions and other site plans. So I would encourage the full body to support the inexpedient to legislate.

SENATOR BELOW: Thank you Mr. President. Senator Kenney, if you recognize that there may be an issue that needs to be addressed here that relates to the topic of off-site improvements. Why do we need to throw an obstacle of a two-thirds majority to allow such legislation in rather than the traditional simple majority?

SENATOR KENNEY: Senator Below, as I understand it, it has the support over there in the House, SB 157 with this amendment, as I have just indicated. And if the Senate concurs with that, it will be studied as it shall be in the near future. I think that is the appropriate vehicle to study this issue rather than to pass something that our committee does not feel in support of.

SENATOR BELOW: Well maybe I didn't make myself clear, because I wasn't saying that we should pass this or not, but I guess you recognize that if we pass this inexpedient to legislate, it would take a 2-3 vote to allow into this body, for consideration, any legislation that comes out of that study committee, even if that has majority support. So my question is, we could table this bill, which would have the same effect of killing it or rerefer it, which could be killed in January or amended. But by voting inexpedient to legislate, we will put up a 2-3 barrier to any result of the study committee. Why do you think that it is necessary to have a 2-3 barrier to take up this issue again?

SENATOR KENNEY: My understanding is that the report will come out on November 2003, which will be later in the fall. If the Senate wants to take up any particular issues that come out of this study committee, you are right, it would be a 2-3 vote in order to do that. But I also understand the type of content and deliberation on some of the issues that involve the study committee, that I think that it is going to be far beyond that before we are going to do something substantive, and it probably would be brought up in the next session. If it needed to be brought up in the coming year, then a 2-3 vote, in my judgement, is appropriate.

SENATOR MARTEL: Thank you Mr. President. With all due respect to my friend Senator Below, I, too, spoke to Gary Abbot, the guy in the Simonsen case. His interpretation to me was that there was no real issue in that entire Supreme Court decision that proved that there is no local authority to control on-site or off-site improvements for any projects. I know that in the city of Manchester and the surrounding communities if you have any projects, you had better have your hands ready to expend for all kinds of traffic lights, islands, sidewalks, curbing and access lanes, as well as anything that they would want. So they do have local power and I stand by inexpedient to legislate and I ask everyone to follow my inexpedient to legislate motion on the bill. Thank you very much.

SENATOR LARSEN: Senator Martel, you, like I, represent a city. In my city, I don't know if it is true of your city, many of the traffic lights and turn lanes have not had to be paid for by local taxpayers. In my city, Steeplegate Mall, most of the traffic lights were paid for through impact fees. The approach that used to be a problem, as many legislatures come into Concord, most of those approaches, many of the traffic lights and the turn lanes that have been necessitated by development have the assist of the taxpayers, it relieves the taxpayers. Because we had the

impact fees that could help that. Are we causing our own taxpayers now to have to subsidize development fees until this legislature reauthorizes a way of imposing impact fees?

SENATOR MARTEL: I don't believe so, Senator.

SENATOR LARSEN: And you don't believe that with no impact fees...who is going to pay for the development, the improvements during this period when there are no impact fees permitted?

SENATOR MARTEL: There may be no impact. I am sure that a developer would have to bring up...what they discuss with the city, as to what kind of expenditures you would have to make to improve the area surrounding the development that he is building.

SENATOR CLEGG: Senator Martel, since Concord, Manchester and Nashua all have impact fee ordinances and master plans, whether this bill passes or it doesn't pass, it doesn't affect them because this bill really only affects those communities who haven't done an impact fee ordinance. Isn't that correct?

SENATOR MARTEL: That is correct.

SENATOR CLEGG: Thank you.

### **MOTION TO TABLE**

Senator Larsen moved to have **HB 531** laid on the table.

**Recess.**

**Out of recess.**

**Question is on the motion to table.**

**A roll call was requested by Senator Below.**

**Seconded by Senator Cohen.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 6 - Nays: 17**

**Motion failed.**

**Question is on the motion of inexpedient to legislate.**

**A roll call was requested by Senator Below.**

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**The following Senators voted No: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 17 - Nays: 6**

**Committee report of inexpedient to legislate is adopted.**

### **MOTION TO SUSPEND THE RULES**

Senator Below moved that the Rules of the Senate be so far suspended as to allow for **SB 209**, relative to permissible campaign contributions by business organizations and labor unions, to be removed from the table after the deadline.

**Question is on the motion to suspend the Rules.**

**A 2/3 vote is necessary.**

**A roll call was requested by Senator Below.**

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Below, Green, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 7 - Nays: 16**

**Motion failed.**

**HB 724-FN-L**, extending the effective date of the Skyhaven airport transfer plan. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Kenney for the committee.

**Senate Transportation**

**May 8, 2003**

**2003-1543s**

**06/09**

#### **Amendment to HB 724-FN-LOCAL**

Amend the title of the bill by replacing it with the following:

**AN ACT** extending the effective date of the Skyhaven airport transfer plan and the period for completing work under the wetlands permit.

Amend the bill by inserting after section 1 the following and renumbering the original sections 2-3 to read as 3-4 respectively:

2 Wetlands Permitting; Extended Period to Complete Required Work. The local public entity which receives the transfer of Skyhaven airport shall have 10 years from the date it accepts the transfer to complete any work required under the wetlands permit issued by the department of environmental services.

**2003-1543s**

#### **AMENDED ANALYSIS**

This bill extends the effective date of the Skyhaven airport transfer plan from July 1, 2003 to July 1, 2006 and extends the period for completion of work under the wetlands permit to 10 years.

**SENATOR KENNEY:** Thank you Mr. President. I move HB 724 ought to pass with amendment. This bill extends the effective date of the Skyhaven Airport transfer plan from July 1, 2003 to July 1, 2006 and extends the period for completion of work under the wetlands permit to 10 years. Over the past few years the city of Rochester has been working hard to develop the Skyhaven airport into a thriving self-funded entity. Until that time comes, Rochester would like to develop a strong working relationship with the state to upgrade the airport to increase its economic potential. Four separate aviation related businesses are looking at expanding or moving to the airports' grounds. Continued wetlands mitigation and sewer system upgrades will allow Skyhaven to further develop the land for potential business. Once Skyhaven's updates are complete, they will be able to compete with the airports in Concord, Laconia, and Sanford, Maine. If the airport is managed responsibly and safely, Skyhaven's success will ulti-

mately provide a long-term revenue stream for both the city and the state. The Transportation Committee strongly recommends HB 724 ought to pass as amended and requests your support. Thank you.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. Senator Green and I have had a couple of chuckles about this and I'd like to share it with the Senate. A lot of you have been here a lot longer than I have. The first time in my short history that this is a bill that I do support ought to pass, but, if we had changed it to inexpedient to legislate exactly the same thing would have happened because the date wouldn't have changed and nothing would have happened. I don't know how many times that can happen, that you can vote inexpedient to legislate or you can vote ought to pass and the same thing is going to happen. I thought that was interesting. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

### **MOTION TO REMOVE FROM THE TABLE**

Senator Prescott moved to have **HB 281-FN** removed from the table.

**Adopted.**

**HB 281-FN**, exempting automatic irrigation system installers from licensure by the electrician's board.

SENATOR PRESCOTT: Thank you Mr. President and thank you Senate members for taking HB 281 off of the table. I would like to present an amendment to HB 281 if it is appropriate at this time?

**Senator Prescott moved to recommit.**

**Motion failed.**

**Question is on the adoption of the committee amendment (1396).**

SENATOR PRESCOTT: Thank you Mr. President. It has been passed out. This bill will...the amendment brings the bill to the House version that was passed by the House to the Executive Departments and Administration Committee and changed it and brought it to the floor and we want to change it back. That is what the amendment does. I hope that you vote ought to pass and get this over with. Thank you very much Mr. President.

SENATOR ESTABROOK: Thank you Mr. President. Members may remember that when this bill went on the table that I was very concerned. In the spirit of compromise, I want to urge folks to support the amendment. Thank you.

### **PARLIAMENTARY INQUIRY**

SENATOR BOYCE: Parliamentary inquiry?

SENATOR EATON (In the Chair): Senator Boyce?

SENATOR BOYCE: If we simply voted down the committee amendment, would it not then be the House Bill as passed, which as I understood, is the effect of this amendment that would be put on? So do we need to actually pass any amendments? Wouldn't it be simpler to simply pass the House Bill as was presented?

SENATOR EATON (In the Chair): We do have to act on the amendment though.

SENATOR BOYCE: But we can vote down that amendment...

SENATOR EATON (In the Chair): Yes, if you so desire.

SENATOR BOYCE: Then not take up the other amendment and the House doesn't have to concur or nonconcur.

SENATOR EATON (In the Chair): Right.

SENATOR BOYCE: Thank you.

SENATOR PETERSON: Thank you Mr. President. Whichever way that we do it, I would like the ultimate bill to reflect an agreement that I believe that we had in the committee to have the bill take effect upon passage. The effective date in this amendment, I believe, through an oversight, was not changed and the original House Bill had the effective date as stated on this amendment. So whatever would be the appropriate way to do so, I would like to make the simple change in what we do here that the bill would be...take effect upon passage.

SENATOR EATON (In the Chair): We would need an amendment for that, Senator Peterson.

SENATOR PETERSON: Would you require a written amendment?

SENATOR EATON (In the Chair): We require a written amendment.

### **MOTION TO TABLE**

Senator Prescott moved to have **HB 281-FN** laid on the table.

**Adopted.**

### **LAIID ON THE TABLE**

**HB 281-FN**, exempting automatic irrigation system installers from licensure by the electrician's board.

### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 41-FN**, relative to the installation of airbags.

### **SENATE NONCONCURS AND REQUESTS A COMMITTEE OF CONFERENCE**

**SB 41-FN**, relative to the installation of airbags.

**Senator Peterson moved to nonconcur and requests a Committee of Conference.**

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Peterson, Sapareto, Foster

### **HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from the Senate:

**HB 310**, establishing a commission to study child support issues.

And requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Arnold, Hallyburton, Bickford, E. Blanchard

**SENATE ACCEDES TO HOUSE REQUEST FOR  
A COMMITTEE OF CONFERENCE**

**HB 310**, establishing a commission to study child support issues.

Senator Roberge moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Roberge, Peterson, Foster

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from the Senate:

**HB 361-L**, permitting municipalities to form regional water districts. And requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Brundige, Lockwood, Boyce, N. Johnson

**SENATE ACCEDES TO HOUSE REQUEST FOR  
A COMMITTEE OF CONFERENCE**

**HB 361-L**, permitting municipalities to form regional water districts.

Senator Johnson moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Prescott, O'hearn, Cohen

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from the Senate:

**HB 418**, relative to annulment of arrest records for defendants whose cases result in acquittal, dismissal, or failure to prosecute.

And requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Tholl, Stevens, Knowles, Fesh

**SENATE ACCEDES TO HOUSE REQUEST FOR  
A COMMITTEE OF CONFERENCE**

**HB 418**, relative to annulment of arrest records for defendants whose cases result in acquittal, dismissal, or failure to prosecute.

Senator Peterson moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Clegg, Peterson, Foster

**RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be by this resolution read a third time and all titles be the same as adopted, and that they be passed at the present time

**Adopted.**

**LATE SESSION**

**Third Reading and Final Passage**

**HB 109-FN**, relative to telemarketing practices.

**HB 164-FN-A**, increasing the gross premiums tax on insurance provided by certain unlicensed companies.

**HB 198**, relative to the police powers of law enforcement officers called to respond to incidents in other jurisdictions.

**HB 240**, establishing a committee to study ways to prevent suicide among young people in New Hampshire.

**HB 278-FN**, relative to certain acts of sexual assault.

**HB 287**, establishing a professional malpractice claims study commission.

**HB 524-FN**, relative to the annulment of certain domestic violence offenses.

**HB 564-FN**, relative to access to information in proceedings of the judicial conduct commission.

**HB 639-FN-L**, relative to receiving legislative body approval through warrant articles before a municipality may continue a program initiated under a grant.

**HB 690-FN**, relative to agricultural crop damage.

**ANNOUNCEMENTS**

**SENATOR JOHNSON (RULE #44):** I would just like to respond to a comment that Senator Clegg made relative to horse and buggy days. I was born in the horse and buggy days and they weren't bad days.

**RESOLUTION**

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of receiving House Messages and processing Enrolled Bill Reports and Amendments, and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

**In recess to the Call of the Chair.**

**Out of Recess.**

May 16, 2003  
2003-1670-EBA  
03/10

### **Enrolled Bill Amendment to HB 225**

The Committee on Enrolled Bills to which was referred HB 225

AN ACT extending the task force on deafness and hearing loss and changing the task force's membership and duties.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

### **FOR THE COMMITTEE**

### **Explanation to Enrolled Bill Amendment to HB 225**

This enrolled bill amendment corrects certain references in the bill, indicates language added to existing law by the bill, and makes a typographical correction.

### **Enrolled Bill Amendment to HB 225**

Amend 2000, 234:4, II(a) as inserted by section 3 of the bill by replacing it with the following:

(a) The governor's commission on disability.

Amend 2000, 234:4, II(c) as inserted by section 3 of the bill by replacing it with the following:

(c) Northeast Deaf and Hard of Hearing Services, Inc.

Amend 2000, 234:5-a as inserted by section 4 of the bill by replacing lines 3-5 with the following:

November 1, ~~[2001]~~ 2005. *The task force shall submit interim reports on its activities and progress to the governor and council, the speaker of the house of representatives, and the president of the senate on November 1, 2003 and November 1, 2004.* The task force shall submit its final report and

Senator Eaton moved adoption.

**Adopted.**

May 13, 2003  
2003-1599-EBA  
06/09

### **Enrolled Bill Amendment to SB 79-FN-LOCAL**

The Committee on Enrolled Bills to which was referred SB 79-FN-LOCAL

AN ACT relative to penalties for the exhibition of fighting animals.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

### **FOR THE COMMITTEE**

### **Explanation to Enrolled Bill Amendment to SB 79-FN-LOCAL**

This enrolled bill amendment makes a technical correction to the bill.

### **Enrolled Bill Amendment to SB 79-FN-LOCAL**

Amend RSA 644:8-a, III, as inserted by section 1 of the bill by replacing line 2 with the following:

paragraph I may be seized by the arresting officer, *pursuant to RSA 595-A:6 and RSA 644:8.* Upon

Senator Eaton moved adoption.

**Adopted.**



May 13, 2003  
2003-1600-EBA  
06/09

### **Enrolled Bill Amendment to SB 34**

The Committee on Enrolled Bills to which was referred SB 34  
AN ACT relative to independent living retirement communities.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

#### **FOR THE COMMITTEE**

### **Explanation to Enrolled Bill Amendment to SB 34**

This enrolled bill amendment makes a technical correction.

### **Enrolled Bill Amendment to SB 34**

Amend RSA 161-J:5, II as inserted by section 6 of the bill by replacing line 1 with the following:

***II. A copy of the residential services agreement shall be given to prospective residents***

Senator Eaton moved adoption.

**Adopted.**

May 15, 2003  
2003-1658-EBA  
04/09

### **Enrolled Bill Amendment to HB 808**

The Committee on Enrolled Bills to which was referred HB 808  
AN ACT relative to proof of residency and resident tax payment for receiving resident fish and game licenses.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

#### **FOR THE COMMITTEE**

### **Explanation to Enrolled Bill Amendment to HB 808**

This enrolled bill amendment makes technical corrections to the bill.

### **Enrolled Bill Amendment to HB 808**

Amend RSA 72:1-c, I as inserted by section 1 of the bill by replacing line 4 with the following:

to it. The provisions of RSA [~~214:11-a, 214:12, 215-A:1, XI,~~] 261:71[;] and 261:72 shall not apply to

Amend RSA 80:3 as inserted by section 2 of the bill by replacing line 18 with the following:

the director [~~or executive director~~] when the registration [~~or license, or both,~~] may be restored.

Senator Eaton moved adoption.

**Adopted.**

**May 15, 2003**  
**2003-1659-EBA**  
**10/01**

**Enrolled Bill Amendment to HB 529**

The Committee on Enrolled Bills to which was referred HB 529  
AN ACT relative to the New Hampshire seed law.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE**

**Explanation to Enrolled Bill Amendment to HB 529**

This enrolled bill amendment makes technical corrections to the bill.

**Enrolled Bill Amendment to HB 529**

Amend RSA 433:2, III(b)(3) as inserted by section 5 of the bill by replacing line 2 with the following:

component in excess of 5 percent of the whole, and the percentage by weight of pure seed in order

Amend RSA 433:2, VII(a)(2) as inserted by section 8 of the bill by replacing line 5 with the following:

completed within 12 months exclusive of the month of test.

Amend RSA 433:2, VIII(c) as inserted by section 9 of the bill by replacing line 1 with the following:

(c) For wildflower seed only with a pure seed percentage of less than 90 percent:

Amend RSA 433:2, XI as inserted by section 10 of the bill by replacing line 1 with the following:

XI. For combination mulch, seed, and fertilizer products:

Senator Eaton moved adoption.

**Adopted.**

**May 15, 2003**  
**2003-1655-EBA**  
**06/09**

**Enrolled Bill Amendment to HB 211**

The Committee on Enrolled Bills to which was referred HB 211  
AN ACT relative to town clerk fee deposit requirements.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE**

**Explanation to Enrolled Bill Amendment to HB 211**

This enrolled bill amendment makes a technical correction to the bill.

**Enrolled Bill Amendment to HB 211**

Amend RSA 41:25, I as inserted by section 1 of the bill by replacing line 7 with the following:  
his or her services.

Senator Eaton moved adoption.

**Adopted.**

May 13, 2003  
2003-1597-EBA  
04/09

### **Enrolled Bill Amendment to SB 36-FN**

The Committee on Enrolled Bills to which was referred SB 36-FN

AN ACT relative to protective custody of a person impaired by drugs and establishing a committee to study the issue of the applicability of the administrative license suspension laws to driving while under the influence of controlled drugs and ways to address the speed with which such cases are adjudicated in the district court.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

### **FOR THE COMMITTEE**

### **Explanation to Enrolled Bill Amendment to SB 36-FN**

This enrolled bill amendment makes a technical correction.

### **Enrolled Bill Amendment to SB 36-FN**

Amend RSA 172:15, II(a) as inserted by section 3 of the bill by replacing line 5 with the following:

protective custody shall end when the person is released to a designated drug counselor, a clinical

Senator Eaton moved adoption.

**Adopted.**

### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bills sent down from the Senate:

**SB 32**, relative to municipal budget recommendations.

**SB 43**, relative to archives and records management.

**SB 53**, establishing an advisory board to the labor commissioner and relative to the terms of the members of the compensation appeals board.

**SB 82-FN**, relative to awards of fees and interest under workers' compensation.

**SB 101-FN**, relative to unemployment compensation.

**SCR 4**, a resolution urging the New Hampshire congressional delegation to take appropriate action against modification of the Clean Air Act if the result jeopardizes New Hampshire's ability to safeguard public health and protect environmental quality.

**SJR 1**, a resolution approving certain uses of Weeks state park.

### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

**HB 215**, relative to expungement of records contained in the DNA database.

**HB 320**, relative to permitting additional contributions in the city of Manchester employees contributory retirement system.

**HB 343**, establishing a boundary commission to determine the boundary between New Hampshire and Maine.

**HB 379**, relative to penalties for OHRV violations by underage operators.

**HB 402**, relative to child passenger restraints.

**HB 434-L**, relative to junkyards and motor vehicle recycling yards.

**HB 477**, establishing certain speed limits.

**HB 593-FN-L**, relative to solid waste facilities in small towns.

**HB 699-FN**, relative to abandoned vehicles.

**HB 711-FN**, relative to the regulation of retail installment sales of motor vehicles.

**HB 770-FN-A**, establishing a committee to study using tax policy to create incentives to encourage employers to hire disabled persons.

**HCR 3**, calling on the President and the Congress to fully fund the federal government's share of special education services in public elementary and secondary schools in the United States under the Individuals with Disabilities Education Act.

### HOUSE MESSAGE

The House of Representatives has voted to Lay On The Table the following entitled Bill(s) sent down from the Senate:

**SB 59-FN**, relative to administrative license suspension hearings.

### HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Bills sent down from the Senate:

**SB 71-FN-A**, establishing a committee to study improving access, affordability, and alternatives in health insurance for New Hampshire consumers.

**SB 122**, relative to the regulation of first mortgage brokers.

**SB 131**, establishing a committee to study the system of health care safety net providers in New Hampshire, and options for improving access to primary and preventive care for the uninsured and underinsured.

**SB 143**, establishing a commission to study and review the regulation of the building trades.

**SB 146**, relative to eligible costs for training grants in the job training program for economic growth.

**SB 210**, relative to the administrative procedures of the real estate commission.

### REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

**HB 153-FN**, relative to grounds for termination of parental rights.

**HB 192**, relative to disposal of controlled drugs in possession of law enforcement officers.

**HB 208**, relative to name changes for inmates and parolees.

**HB 218**, relative to the definition of beneficially interested person.

**HB 231**, requiring the department of education to develop a plan to address and reduce the number of persons awaiting vocational rehabilitation transition services.

**HB 269-FN**, relative to claims arising from clinical services provided to the department of health and human services.

**HB 394**, relative to incompatible offices.

**HB 423**, relative to safe deposit boxes.

**HB 497**, relative to inactive status licenses.

**HB 506**, relative to health club membership initiation fees and renewal practices.

**HB 515**, excluding certain agreements between fish and game licensees and landowners from the right-to-know law.

**HB 561**, repealing the Uniform Aircraft Financial Responsibility Act.

**HB 658-FN**, relative to impersonation of candidates.

**HB 661-FN-L**, relative to Westport Village Road in the town of Swanzev.

**HB 766**, relative to the information required for a license to carry a pistol or revolver.

Senator D'Allesandro moved adoption.

**Adopted.**

#### **REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

**HB 402**, relative to child passenger restraints.

Senator D'Allesandro moved adoption.

**Adopted.**

#### **REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

**HB 77**, establishing a committee to study the process of de novo appeals from the district courts.

**HB 179**, establishing a committee to study enhancement of laws relating to vehicle pursuits.

**HB 244**, establishing a committee to study landowner liability for owners providing public access to snowmobile trails.

**SB 166**, establishing a committee to study methods for the state to create incentives for school districts to provide mentoring for beginning teachers.

**SB 198**, relative to a certain highway sign in Concord.

Senator D'Allesandro moved adoption.

**Adopted.**

**REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

**HB 212**, defining "terrorize" for the purpose of criminal threatening.

**HB 253**, relative to the design build concept for certain projects.

**HB 436**, relative to the acquisition of Connecticut Valley Electric Company and electric utility restructuring and relative to the real estate and personal property tax exemption.

**HB 831**, adding duties to the oversight committee on health and human services.

**SB 39**, relative to the results of a preliminary breath test as evidence in court.

**SB 48**, exempting housing for older persons from certain age discrimination laws.

**SB 52**, relative to a voluntary certification program for police dogs and handlers.

**SB 56-FN**, relative to parking for persons with disabilities.

**SB 57-FN**, relative to certain accounts within the fish and game fund.

**SB 66-FN-A-L**, limiting the exemption from the meals and rooms tax for sales of alcoholic beverages by voluntary nonprofit organizations operating under one-day licenses from the liquor commission.

**SB 91**, extending the committee to study eminent domain proceedings and adding certain duties.

**SB 129**, relative to the board of tax and land appeals and eminent domain cases.

**SB 138-FN**, clarifying the exemption from the interest and dividends tax for distributions from qualified tuition savings programs.

**SB 145-FN-A**, relative to the duties of the board of trustees of the department of regional community technical colleges.

**SB 165**, relative to the voluntary dissolution of nondepository trust companies.

**SB 171**, regulating non-agricultural activities which may cause the introduction and spread of infectious wildlife diseases.

**SB 173**, relative to certain historical and recreational facilities.

**SB 190**, relative to community living facilities.

**SB 219**, relative to superior court notice to health care regulatory boards of felony convictions of health care providers.

Senator D'Allesandro moved adoption.

**Adopted.**

**LATE SESSION**

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*May 22, 2003*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend Canon Gene Robinson, Episcopal Diocese of New Hampshire, Guest chaplain to the Senate, offered the prayer.

Later today, among other business, you will be wrestling with the issue of parental notification. You're in good company. That issue has been around for thousands of years. In fact, the only story of Jesus's adolescence found in the Christian scriptures is about his going to the Temple, without his parents permission. Unfortunately, today, when kids sneak off, they often get into far deeper trouble than they would if they were sneaking off to church, synagogue or mosque. The reactions of parents to finding out that their child has gone off on their own and made some poor decisions is not always as kind and understanding as that of Mary and Joseph. The fact is: most homes are safe – but we know that some are dangerous. Most parents are loving – but we know that some are anything but. Today, you will wrestle with how best to support families and at the same time, take care of these vulnerable kids, who have no vote, but who still are your constituents, and your responsibility. Let us pray:

*Good and great God, give the wisdom of Solomon to these Senators today as they consider how best to serve the people of New Hampshire, its parents and families, and especially its vulnerable, teenaged young women. May they seek the best ways to protect these young people who've made poor choices. May they trust the parents of this state, but not be blind to those parents who would betray that trust. And in all things, give them wisdom as they craft legislation which will affect so many young lives. Amen.*

Senator Sapareto led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS

### HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 44**, relative to penalties for vehicle dealers.

### SENATE NONCONCURS AND REQUESTS A COMMITTEE OF CONFERENCE

**SB 44**, relative to penalties for vehicle dealers.

Senator Kenney moved to nonconcur and requests a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Flanders, Morse, Below

### HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 142-FN**, relative to advertisements on utility poles and highway signs.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 142-FN**, relative to advertisements on utility poles and highway signs.

Senator Kenney moved to concur.

SENATOR BELOW: Senator Kenney, could you just briefly explain what they have done, how they have changed that?

SENATOR BELOW: Thank you Senator Below. This is SB 142. The changes that the House did was that "the owner of an object upon which an advertisement is placed in violation of this section shall be entitled to remove and destroy the advertisement and the advertisement owner shall not be entitled to damages or compensation." So basically it allows a person who puts something on, for instance, a telephone pole. The owner is allowed to go and take that advertisement off. If there is any expense in regard to that, then the advertiser of that piece of material would have to pay the owner. So that is basically what it is doing, so I concur with the amendment. It tightens it up a little bit.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 206-FN**, relative to the registration of OHRVs used as grooming equipment for cross country ski trails.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 206-FN**, relative to the registration of OHRVs used as grooming equipment for cross country ski trails.

Senator Gallus moved to concur.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SCR 2**, urging the United States Congress to act to rectify the science, research funding, and restrictions governing the Northeast multispecies fishing industry and its impact on New Hampshire fishermen.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SCR 2**, urging the United States Congress to act to rectify the science, research funding, and restrictions governing the Northeast multispecies fishing industry and its impact on New Hampshire fishermen.

Senator Gallus moved to concur.

**Adopted.**

**COMMITTEE REPORTS**

**HB 763-FN**, requiring parental notification before abortions may be performed on unemancipated minors. Judiciary Committee. Ought to pass with amendment, Vote 3-2. Senator Peterson for the committee.



Senate Judiciary

May 12, 2003

2003-1585s

01/09

**Amendment to HB 763-FN**

Amend the title of the bill by replacing it with the following:

AN ACT relative to information and counseling to minors seeking abortion.

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; Prior to Abortion. Amend RSA 132 by inserting after section 24 the following new subdivision:

Information and Counseling to Minors Seeking Abortion

132:25 Definitions. In this subdivision:

I. "Counselor" means a psychiatrist licensed under RSA 329:12, a psychologist licensed under RSA 330-A:16, a clinical social worker licensed under RSA 330-A:18, a marriage and family therapist licensed under RSA 330-A:21, a registered nurse or practical nurse licensed under RSA 326-B:6, or 326-B:7, or a guidance counselor certified under RSA 21-N:9, II(s).

II. "Minor" means any person under the age of 18 years.

III. "Provider" means a physician licensed under RSA 329:12, a physician's assistant licensed under RSA 328-D:3, or an advanced registered nurse practitioner licensed under RSA 326-B:10.

132:26 Information and Counseling Required.

I. Prior to the performance of an abortion upon a minor, a provider or counselor shall provide pregnancy information and counseling in accordance with this subdivision in a manner and language that will be understood by the minor. The provider or counselor shall:

(a) Explain that the information being given to the minor is being given objectively and is not intended to coerce, persuade, or induce the minor to choose to have an abortion or to carry the pregnancy to term.

(b) Explain that the minor may withdraw a decision to have an abortion at any time before the abortion is performed or may reconsider a decision not to have an abortion at any time within the time period during which an abortion may legally be performed.

(c) Explain to the minor the alternative choices available for managing the pregnancy, including:

(1) Carrying the pregnancy to term and keeping the child;

(2) Carrying the pregnancy to term and placing the child for adoption, placing the child with a relative, or obtaining voluntary foster care for the child; and

(3) Having an abortion, and explain that public and private agencies are available to assist the minor with whichever alternative she chooses and that a list of these agencies and the services available from each will be provided if the minor requests.

(d) Explain that public and private agencies are available to provide birth control information and that a list of these agencies and the services available from each will be provided if the minor requests.

(e) Discuss the possibility of involving the minor's parents, guardian, or other adult family members in the minor's decision making concerning the pregnancy and whether the minor believes that involvement would be in the minor's best interests.

(f) Provide adequate opportunity for the minor to ask any questions concerning the pregnancy, abortion, child care, and adoption, and provide information the minor seeks or, if the person cannot provide the information, indicate where the minor can access the information.

II. After the counselor or provider provides the information and counseling to a minor as required by this subdivision, such counselor or provider shall have the minor sign and date a form stating that:

(a) The minor has received information relative to alternatives to abortion, that there are agencies that will provide assistance, and a list of these agencies and the services available from each shall be provided if the minor requests.

(b) The minor has received an explanation that the minor may withdraw an abortion decision or reconsider a decision to carry a pregnancy to term.

(c) The alternatives available for managing the pregnancy have been explained to the minor.

(d) The minor has received an explanation about agencies available to provide birth control information and that a list of these agencies and the services available from each will be provided if the minor requests.

(e) The minor has discussed with the person providing the information and counseling the possibility of involving the minor's parents, guardian, or other adult family members in the minor's decision making about the pregnancy.

(f) If applicable, the minor has determined that not involving the minor's parents, guardian, or other adult family members is in the minor's best interests.

(g) The minor has been given an adequate opportunity to ask questions.

III. The counselor or provider shall also sign and date the form and shall include his or her business address and business telephone number. The counselor or provider shall keep a copy for the minor's medical record and shall give the form to the minor or, if the minor requests and if such person is not the attending provider, transmit the form to the minor's attending provider. Such medical record shall be maintained as otherwise provided by law.

IV. The provision of pregnancy information and counseling by a provider or counselor which is evidenced in writing containing the information and statements provided in this subdivision and which is signed by the minor shall be presumed to be evidence of compliance with the requirements of this subdivision.

V. The requirements of this subdivision shall not apply when, in the best medical judgment of the provider based on the facts of the case before the provider, a medical emergency exists which so complicates the pregnancy or the health, safety, or well-being of the minor as to require an immediate abortion. A provider who does not comply with the requirements of this subdivision because of this exception shall state in the minor's medical record the medical indications on which the provider's judgment was based.

132:27 Rulemaking. The commissioner of the department of health and human services shall adopt rules, under RSA 541-A, relative to the forms required under this subdivision.

2 Effective Date. This act shall take effect 60 days after its passage.

2003-1585s

## AMENDED ANALYSIS

This bill requires a counselor or health care provider to provide a pregnant minor, under the age of 18 years, with counseling and information before such minor has an abortion.

SENATOR PETERSON: Thank you Mr. President. On behalf of the Senate Judiciary Committee, I move HB 763 ought to pass with amendment. Mr. President, a great political storm surrounds this legislation, which requires us to explore our core belief about such matters as when life begins and whether or not a woman has the right to choose in private, whether to terminate at an early stage, an unwanted pregnancy, unburdened by undue governmental interference. At first glance, the question seems obvious, for we all wish that loving parents would be involved, supportive and available to their minor children in major decisions or in times of crisis. So how can it be that since this bill was first introduced, over 20 years ago, it has been rejected each and every time it has been considered in our state by Republican dominated legislatures? Having previously served on the Judiciary Committee in the House on day long hearings in Representatives Hall and having listened to wrenching floor debate on similar legislation and other pro-life initiatives, I have joined with a personal battle of conscience on this issue, and have come to respect the views of all who honestly undertake, define in these difficult matters, a just and proper balance between the responsibility of government and individual rights. Following one elongated House session on this bill a few years ago, as the roll call was announced, I reentered the Chamber alongside of a veteran conservative colleague whom I asked somewhat wearily at that point, "how are you going to go on this one"? Mr. President, what happened next I will never forget. He stopped, turned and looked at me and said, "Andy, this is a vote you cast for the person who is least able to speak for themselves. This is the vote where you decide what it is you are here for, and the purpose of, for which the power of government was created. It is to be used." The members of the Senate Judiciary Committee did not forward this legislation nor seek out the role that we were given, but we accepted the responsibility to work on this bill, which this year, for the first time, narrowly passed the House. Our amendment places in law, a structure of required practice, to ensure that licensed professionals counsel young women to fully inform them of the alternatives in this difficult situation and encourage wherever possible, full parental involvement. The amendment however, stops short of requiring parental notification in all instances, as such action would lead to serious unintended consequences. Professionals who regularly counsel young women, have repeatedly informed legislators that the great majority already speak with a parent in such a time of crisis and that the decision to do otherwise is not made lightly. Indeed it is only these troubled and vulnerable young people, the ones with a reason not to tell a parent, that this legislation would affect. And sadly, even in gentle New Hampshire, not all families are the Brady Bunch. If we choose to pass the original legislation, experience demonstrates that one undeniable, unintended consequence will be to force a future minor victim of sexual abuse, either to agree to notify her very abuser or to appear in court to defend her right to seek out the support that she chooses in a time of indescribable anguish. I suggest that a young woman knows her circumstances better than anyone and decency demands that our laws grant her greater protection not greater heartache. In recent conversation with a valued colleague in this

Chamber, sums up the issue before us today. He said to me, to paraphrase, "these young people are in a terrible situation. We need to act on this bill in a way that makes the situation better not worse." Mr. President, this is exactly what the Judiciary has done in the amendment before you. It allows us to move forward, have progress on this issue, and place in our law, a measure which we can truly be glad for. I urge the members to vote for passage. Thank you Mr. President.

SENATOR CLEGG: Thank you Mr. President. As a member of the Judiciary Committee, I would like for the record to let the people know that it was a 3 to 2 vote. I was one of the 'no' votes. I believe that when you look at the facts, and we talk about a pregnant woman who may have gotten pregnant by a parent through abuse, that this is the very thing that we need to know, we need to reveal in order for that girl to get help. I would suggest that you vote no on the committee amendment.

SENATOR BELOW: Thank you Mr. President. I rise in support of the committee amendment. I think that it is a good approach to the problem, to the question, to ensure that the best practice of a physician who may be considering providing an abortion or a counselor who is working with a young woman who is facing that question, that we be ensured that they provide them with all the information of the alternatives. In fact, review the option of involving the parent with this difficult question. When we make laws, I think that we have to think of not just how a law applies to the majority of circumstance to the situations that are most common and predictable, but we have to think about how the law applies to unusual, exceptional situations. The fact is that most of us would certainly want parental notification and consent and involvement in this question. In fact, that is the current state of affairs. The vast majority of minor, young women, do involve their parents in this difficult question. The minority who don't are the minority that we have to consider their situation. If this law, the underlying law, not as amended by the committee, were to come into effect, the young women, for various reasons, don't want to have their parents notified would have a few simple choices. They could go to a judge if they had the means to do that. What we know from other states' experiences, is that most judges, the vast majority, provide the approval of the permissions. A very short ten, maybe 15 minute interview. Their only job is to ascertain whether the young women have the sufficient maturity to make this decision on their own. Something that the physicians themselves have to do as well. In Massachusetts, maybe you heard the statistic of...since they enacted such a law, there has been over 17,000 judicial bypasses. Something like 15 of them were denied in the first instance and on an appeal all but two were granted. So out of 17,000 judicial bypasses requested, two were blocked by a judge. The statistics also show that there has been a significant or discernable increase in parental involvement in these decisions in states that have passed such laws. I do think that we have to think about the exceptional situations. Certainly where there is a case of incest, of such sexual abuse, or rape, we would like that revealed and like that intervention. But there are some young women who are so concerned about not having that revealed that they won't go see a judge, they won't go to see a physician for knowing that there will be parental notification. Instead they will try to go to perhaps another state if they have the means. They will put off the decision, which increases and endangers their health or they will try to take matters into their own hands by inducing a miscarriage by trying to procure an illegal abortion or

suicide. Those are the outcomes that we have to think of when we consider such legislation. The underlying bill has numerous flaws in it. One that I haven't heard much discussion about but I think bears attention to, is the definition of parent. It means one parent of the pregnant girl, if one is living or the guardian or conservator, if the pregnant girl has one. Guardian or conservator is defined relative to RSA 464-A which concerns a person who is incapacitated. Mentally incapacitated by functional limitations. It doesn't deal with the situation where there is a guardianship that has been appointed perhaps because the child has been removed from a home where there has been sexual abuse. So we would have the ironic situation where a young woman seeking an abortion might have one living parent, their father, who might be the father...the cause of the pregnancy, who might have sexually abused or molested the child, who would be the only one to be notified for parental notification, even though they have no legal custody or legal guardianship. That is certainly an inappropriate and awkward situation. I am speaking on why we should pass the amendment and not the bill. There also has been the point suggested that they can go to a judge for a bypass, but what if the young woman is the child of a judge? What if heaven forbid, the judge is the cause of the pregnancy or the brother of the judge? I mean these are uncomfortable thoughts but these things happen. Things that we wouldn't expect in our society, have occurred. Look at the clergy sex scandal. It is not limited to one denomination. It is not limited to sexual abuse of one gender. Look at Judge Fairbanks who was sexually assaulting people, minors who came before his court. In such a situation, neither parents of notification or the judicial bypass is a reasonable option. I would urge passage of the committee amendment and would oppose the underlying bill. Thank you Mr. President.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise in support of the bill as amended. There are times when members of the legislative body that we have to make some very, very significant decisions that have a personal implication and a personal affect for everyone here. My stake in this situation is a rather unique one. First of all, I am a parent of two adopted children. I have a good relationship with my children and I hope that everyone has a good relationship with their children. But let me tell you that the first thing that we can't do, we can't legislate perfect families. It is out of our control. But if indeed we aspire to be the best parent that we can be, we won't need this kind of legislation because the interaction between the parent and the child takes place, and it doesn't just take place in this particular situation. It takes place when you come home from a date. When your mother or father is waiting for you and asking you, how did things go? Was it a good situation? Did you do anything that you aren't proud of and let's talk about it? I had the unfortunate situation of losing my mother when I was seven years of age. But my father was there everyday for me. Seventy percent of the women who think about this procedure, have a conversation with their parents. That is happening today. That is important for us to realize that that rapport does exist between a child and their parent. Unfortunately, fifty percent of the marriages in this country end up in divorce. In that case, who suffers? Most often it is the child. The rate of incest. The rate of sexual predatory has reached high, high points in our society. Just take a look at what happened in Keene, when Internet Sex was discovered by a prominent detective over there. He has made his life's work finding these predators. Well, women sometimes have been the victims of this activity. This is a tough decision. It is a very tough decision, but it is

inconsistent with New Hampshire. In New Hampshire, we believe in individual liberties. We don't legislate medical practices. We keep decisions in the hands of the patients and their providers. We have passed a number of laws: RSA 318-B:12-a allows a minor to legally consent to medical treatment if they are of sufficient maturity to understand the nature and consequences of such treatment. RSA 141-C:18 allows a minor 14 years or older to voluntary consent to medical diagnosis and treatment for HIV, AIDS and other sexually transmitted diseases without parental notification or consent. RSA 318-B:12-a allows any minor 12 years or older to voluntarily undergo treatment for alcohol problems without parental notification or consent. That has been the spirit and tradition of New Hampshire. This amendment maintains that spirit. Certainly, we, as legislators, we, as individuals, we, as parents, we encourage that interaction between ourselves and our children. I have three grandchildren. Three women grandchildren. I have a concern for them. My oldest granddaughter is a sophomore in high school and certainly the concern is there. As I said at the beginning, you cannot legislate perfect parenting. We do our best. This bill as amended, sustains what has been the New Hampshire tradition. As my colleagues, I urge you to support the work done by the committee. I commend the committee. It wasn't easy. It is not easy. Life is not easy. Life is never supposed to be easy. We know that. But when we enter this life, we say that we are going to do the best that we can. We offer ourselves in the public service to do the best that we can do. To deliver to our families, to our constituents, the best that we can do. I hope that you will uphold that tradition. Thank you Mr. President.

SENATOR COHEN: Thank you very much Mr. President. A lot of this discussion about this bill as we all know has been really intense. We have all had emails, phone calls and letters. Frankly, I am angry. A lot of it in my opinion has really crossed the line. Just this morning, at 6:35 a.m. my wife was woken up by a phone call from an anti-choice person here. This is too much here. This is something that crosses the line. I am just really angry about this. The people that sit here, my colleagues just said, and I am trying to influence some of you who may be on the line here, and a little bit undecided. People have said, my colleagues have said, this is not about abortion, it is about families, being pro-family. This is about abortion. Make no mistake about that. One of my constituents emailed me, "the original bill is not pro-parent, nor pro-family, but only anti-choice and anti-abortion." I would hope that my fellow Senators would support the committee amendment. After all the testimony that they heard, the committee amendment, I think, makes a lot of sense, if we really care about family communication. I will tell you, of all of the communications that I have gotten in favor of the original bill, without exception, every single one who supports the original bill, wants to end reproductive rights, without exception. There hasn't been one call or one letter or one email that favors this bill, the original bill, that does not want to end or has the intention of ending reproductive rights. That is what this bill is about. The fact that the definition of "fetus" is in there, that is not a mistake. The purpose there is an example of the real goal, which is to chip away our constitutionally based reproductive rights. Can we legislate communications? Of course we can't. But that is what this is about. This is meddling. This is meddling into personal family communications. This is a purposeful foot in the door that wants to end reproductive rights. As Senator Peterson said, "undue governmental interference is what the original bill is about" and that is why I hope and

plead with my colleagues to support the committee amendment. On NPR this week, there has been a discussion about teen pregnancy and teen sexual activity, something that we are all concerned about. What they reveal is that having a talk, having communication, taking responsibility, prevents teen pregnancy. Taking personal responsibility prevents teen pregnancy. Having the threat of a court over a teenage girl is only going to terrify her. So a reporter asked me a few weeks ago, "how would I feel if either of my daughters got pregnant as a teenager"? At two-and-a-half and six-and-a-half now, this is something that I think about. That was a very good question from a reporter. How would I feel if she had an abortion without telling me? I would feel terrible. Make no mistake, I would feel awful. It would be a reflection of a sincere personal failure. My own personal failure if my teenage daughter, and I am going to be in my mid-sixties when I have two teenage girls, so have mercy on me. If my teenage daughters had an abortion, it would be my personal failure. It is our responsibility. There is a lot of talk about taking personal responsibility these days and I believe it. This bill, without the amendment, shifts the responsibility. It shifts what is our responsibility as parents, onto the government and that is wrong. I would urge my colleagues to support the committee amendment. It makes a lot of sense and it encourages good family communications which we have to take responsibility. Thank you.

SENATOR MARTEL: Thank you Mr. President. I stand in opposition to HB 763 as amended by the Senate Judiciary Committee. Mr. President, I strongly support this bill because it allows families with daughters to work together as a family unit. The entity which has eroded over time. In reality, this bill has neither a pro-life or a pro-choice issue. It is an issue of children's safety and pride of family union. Union not only of the living parties, but of those who would be exterminated by the wrong decision, abortion. I have a great deal of respect for my fellow Senators who argue on both sides, on the other side of my beliefs and position. They have every right to do so and to present their cases before this body and their constituents. On the other side are those that rally to make this a pro-abortion issue and they do so as a scare tactic, not only for us, the representatives of the citizens of our great state, but apparently for those young children who need to speak and be guided by their parents to do the proper thing. I ask that you vote against this amendment which strikes at the very meaning of the original bill. I would like to clarify one fact if I could, that Senator Below brought forward. About 17,000 judicial bypasses, my information is that it was over 22 and a half years. So I just wanted to bring that up. I urge you all to vote down the committee amendment. Thank you Mr. President.

SENATOR ROBERGE: Thank you Mr. President. While there are many benefits to parental involvement laws, I will limit my remarks to the two most important. Improved medical care for the young women seeking abortions and increased protection against sexual exploitation by adult men. Medical care for minors seeking abortions will be improved in three ways. First: Parental notification will allow parents to assist their daughters in the selection of an abortion provider. This is particularly important in New Hampshire where people other than licensed physicians are permitted to perform abortions. As with all medical procedures, here is one of the most important guarantees of patient safety, is the professional confidence of those who perform the medical procedure. The United States Supreme Court acknowledged the superior ability of a parent to evaluate and select appropriate healthcare providers. In this case, however,

we are concerned only with minors who according to the records, range in age from children of 12 years to 17-year-old teenagers. Even the later are less likely than adults to know or be able to recognize ethical, qualified physicians or to have the means to engage such professionals. Many minors who bypass their parents probably will resort to an abortion clinic without being able to distinguish the confident and ethical from the incompetent or unethical. Historically, the national abortion federation has recommended that patients seeking an abortion confirm that the abortion will be performed by a licensed physician in good standing with the State Board of Medicine and Medical Examiners and that doctor has admitting privilege at a local hospital not more than 20 minutes away from the location where the abortion is to occur in case complications arise, to have adequate protections available. These recommendations have been deleted. This occurred after they were introduced into evidence into malpractice cases in abortion providers. Second: Parental notification will make sure that the parents have the opportunity to provide adequate medical history and inform to the abortion provider, prior to the performance of the abortion. The medical, emotional and psychological consequences of the abortion are serious and can be lasting. This is particularly so when a patient is immature. Adequate medical and psychological case history is important to the physician. Parents can provide medical and psychological data to the physician and other sources of medical history such as family physicians and authorizes family physicians to give out prevalent data. Abortion providers in return, will have the opportunity to disclose the medical risks of the procedure to an adult who can advise the girl in giving her informed consent to the surgical procedure. Parental notification ensures that abortion providers inform a mature adult of the risks and benefits of the proposed treatment, and after having received a more complete and thus more accurate medical history of the patient. The third way in which parental notification will improve medical treatment to pregnant minors is that ensuring that the parents have adequate knowledge to recognize and respond to any post abortion complication that may have developed. While it is often a claim that abortion is one of the safest medical procedures performed today, the actual rate of many complications is simply unknown because there is no coordinated effort to collect and maintain this information. Notwithstanding this failure by public health authorities, abortion providers have identified infection as one of the most important post-abortion complications. The warning signs of this infection begin early within the first 48 to 96 hours. Caught early, most infections can be treated successfully with oral antibiotics. Left untreated, can result in death. Similarly, most pro-operative procedures done, bleeding is very, very common and can easily be controlled, however, if not properly handled, it can result in many complications. Experts also often characterize a perforated uterus as a normal risk associated with abortion. This complication can also be easily dealt with if detected early, but leads to serious consequences if medical help is not sought promptly. Some of the more serious complications are delayed and may only be detected during follow-up visits, yet only one-third of all abortion patients actually keep their follow-up appointments for post operative checkups. Many minors ignore or deny the seriousness of post operative symptoms and they lack the financial resources to respond to these symptoms. Parental notification, hemorrhaging, may be mistaken for a heavy period, and severe depression is also a serious problem with the teenage girl. Without knowledge of their daughters abortion, parents cannot ensure that their chil-



dren obtain necessary post-operative care or provide adequate medical history to physicians, how to treat any complications that may arise. The first omission may allow complications such as infection, preparation or depression to continue untreated. The second omission may be lethal. When parents do not know that their daughter has had an abortion, ignorance may prevent swift, appropriate intervention by emergency room professionals responding to a life threatening condition. In addition to improving medical care received by young girls dealing with unplanned pregnancy, parental notification will provide increased protection against sexual exploitation of minors by adult men. National studies reveal that almost two-thirds of adolescent mothers have partners older than 20 years of age. In studies, over 46,000 pregnancy by school age girls in California, research found that 71 percent or over 31,000 were fathered by an adult, post high school men, whose age was 22 years old or older, an average of five years older than the mothers. Even among junior high school mothers, age 15 or younger, most births are fathered by adult men 6 or 7 years their senior. Men age 25 or older fathered much more births among California's school age girls than do boys under 18. Other studies have shown that most teenage pregnancies are the result of predatory practices by men who are substantially older. A survey of 15,000 unmarried minors having an abortion revealed that among minors who reported, that neither parent knew of the abortion. Eighty-nine percent said a boyfriend was involved in deciding or arranging for the abortion. Ninety-three percent of those 15 or under said a boyfriend was involved. Further, seventy-six indicated that a boyfriend help pay for the expenses of the abortion. Clearly in a number of young girls who obtained abortions without their parents knowledge, were encouraged to do so by a boyfriend who could have been charged with statutory rape. Secret abortions do nothing to expose these men's wrongful conduct. In fact, by aborting the pregnancy, abusive partners often avoid public evidence of their misconduct and a license to continue the abuse. Parental notification laws would ensure that the parents have the opportunity to protect their daughters from those who would victimize their daughters. Abortion providers are reluctant to report information indicating a minor is a victim of statutory rape. Failure to report may result in a minor returning to an abusive situation. In California an abortion was performed on a 12-year-old girl who had been impregnated by her 23 year old foster brother. The girl was returned to the foster home where she was raped again, and again was pregnated. Not only may fail to report the result in further abuse of the girl, it may prevent punishment of the abuse, if the abuse is ultimately discovered. If a parent is notified he and she can often provide additional information regarding who the minor has been seeing and is more likely to seek legal protection if the minor has been the subject of abuse by an adult. Advisories of parental involvement often spoke of girls being beaten or thrown out of their home if they tell their parents of their pregnancies or life threatening injuries as they attempt to abort the pregnancy themselves. Parental involvement are in the books over two-thirds of the states. Some are over 20 years old. There is no case where it has been established that these laws have actually lead to parental abuse. We all know about Becky Bell and I will not go into that. I agree with the amendment as the bill, as it came out of the House and I ask you to defeat the amendment that came down out of Senate Judiciary. I was one with Senator Clegg who voted against this amendment. Thank you.

SENATOR ESTABROOK: Thank you Mr. President. I really hadn't planned to speak today but as the debate has gone on and as a woman who is old enough to remember the days before *Roe vs Wade*, I feel that I have to speak, especially given something that one of my colleagues, my honorable colleague from Lebanon mentioned. He reminded us of what we really should be thinking about in terms of the outcomes of this bill, or about the affects on young women and who may choose to delay, denial, suicide, self inducement and illegal abortions. When he made that comment, I decided that I needed to speak because thirty years ago I had an experience that created a picture in my mind that I cannot forget. I accompanied a good, good friend to get an abortion. It was just after *Roe vs Wade* was passed. So the options that existed were really very similar to the options that existed prior to *Roe vs Wade*, but would have been considered an illegal abortion, was legal, but nonetheless, occurred in such a setting that I cannot get that picture out of my mind. A simple apartment in a simple residential apartment building. In the living room of which sat ten to fifteen young women. In the bedrooms of which abortions were being performed. An hour or two afterwards, the young women were leaving to go home. I don't want to see us returning to that. I don't want to see us return to worse than that. For me, that is the core issue here. We are all in favor of family communication. Again, as we all talk about our daughters, I have two daughters 19 and 21. The very people that we are talking about. Of course I would want them to talk with me. We have been through things that assure me that they would talk to me, but I also know that they have friends in situations where the outcome would be more similar to what I just described. I think that is a frightening outcome and it is the one that we need to think about when we cast our vote.

SENATOR BARNES: Thank you Mr. President. I rise in strong opposition to the committee amendment and in favor of HB 763 as it came over from the House. I am going to read something to you. As you all know, I am not very good with words. So I am going to use somebody else's words. What it is, is the testimony that was given in front of the Judiciary Committee by the Governor of our state, who thank God, if we pass 763, not amended, will sign it into law. From Governor Benson, "Good morning. It is nice to be here Mr. Chairman and members of the committee. I will be very brief. I am here to testify in favor of HB 763 for a very simple reason. I am here representing the parents of the state of New Hampshire. I would like to give them their right to be a parent back. House Bill 763 tries to deal with that particular issue. I am the parent of two teenage daughters and I know how trying and tribulating it can be to try and raise two young daughters and all the different things that they go through. One of the things that I think is just totally wrong is the state insert itself in one of the most important decisions that my daughters may ever have to make without any advice from their father or mother. We ask our parents to be responsible every single day, yet when it comes to a very, very important decision in their own children's lives, we take that decision away from them. I think that it is time that we restored back the respect and dignity and decisionmaking authority to where it should rightfully be and that is with the parents. I have to tell you that one of the things that I heard as part of the campaign for HB 763 was this very simple saying: The state of New Hampshire does not love any of our children. Our parents love our children. So let's give our parents, who love these children, the right to weigh in on a very, very important decision and let's do it soon. That is all that I would like

to say in favor of this bill. Thank you very much for your time." Governor Benson. Those were his comments and I couldn't have said it any better. I thank the Governor for saying what I think is right on target. Thank you Mr. President.

SENATOR O'HEARN: Thank you Mr. President. This is a very difficult morning for a lot of us. Of course we want our children to come to us. And as many of us have questioned our children on whether they believe in notification, parental notification, that is the wrong question that we should be asking our children. The question that we should ask is would you come to us if you were in trouble? That is the question that I asked my children. I think that we need to take a look at what we have before us. Parental involvement is so important in our children's life, that communication is so important in our children's life. What we have before us are issues that deal with sex and children. Sex and violence. Sex and abandonment. Sex and abuse. Sex and guilt. None of those things go together. Not one of them. Yet, for all of us that have daughters, granddaughters, nieces, sisters, aunts, mothers, friends, there has been abuse. There has been violence. There has been abandonment, and there has been guilt. I don't think that the 18 men in this Senate understand what it is like to be pregnant. There are only four of us here that understand pregnancy. That understand the hormonal differences that we all go through. Let me explain to you what happens when you add sex and violence, abandonment, guilt and abuse. You have a child with anxiety attacks, depression, anorexia, bulimia, post traumatic stress disorder, migraines, suicide tendencies, dangerous behavior, self destruction, drug and alcohol abuse and guilt. You know what? They blame themselves. It is their fault. If they have to go to court for cases of rape, they get blamed all over again. So here we are trying to prevent that. We are not even talking about sexually transmitted diseases that these young women are subject to. This is something about females, that I think females understand better. The one thing that females need in this is counseling. That is the first thing that they should get. Without that counseling, these young women are destroyed. Maybe to help you understand what women go through, take a look at the tragedy in the Catholic church. I think that I was most moved by the father from Newton whose young son was taken away in a straitjacket. That father thought that his son was mentally deranged and had to be put away. What happened was that he was abused and he had no one to talk to. No one to be counseled. Counseling is the most important thing that we can give to our daughters. If they can't come to us, I think that we had better start soul searching and find out why. If they can't come to us, then at least give them the opportunity for counseling. I am supporting this amendment. I think that it is the right thing to do. I think that you need to understand what our young women go through and all the mental anguish that goes along with it. I also want to remind you that we have a difficult time getting mental healthcare in this state. I also want to remind you that we are talking about doing away with the drug and alcohol task force. I want to remind you that we have no insurance for drug and alcohol abuse, all of which is needed when we have cases and you involve sex and violence. Sex and children. Sex and abandonment. Sex and abuse and sex and guilt. Please be careful in what you think you are doing to our daughters.

SENATOR LARSEN: I rise as one of just four in this Senate who have the ability to say that we have been both mothers and teenage girls with mothers and fathers, hopefully. I think that it is a unique knowledge that

while some of you can imagine, perhaps you should open your ears to what it is that these young people face. I, too, during my teenage years in college, counseled friends who were in desperate, desperate situations. I have seen the desperation. I have seen the options that were available. I have encouraged those friends. I had encouraged those friends to talk to their families. I have seen the desperation of trying to figure out how do you live a life with an unwanted child or how do you get the money to go someplace that may not be the best, but it is your only option. Those are desperate choices. The amendment that you have before you, gives people counseling. The amendment before you encourages a full discussion of option. This amendment, supported by the committee, encourages the minor discussing with their parents, their guardian or other adult family members, their options. The fact is that no law can create good family communication when none exists. No law can correct an abusive home situation. When faced with parental notification against her wishes, a pregnant teenager may either flee the state for an abortion, seek consent from a judge who is a fearful creature in black robes in a place that they have never been, seek an illegal procedure, seek a self-induced dangerous procedure or do nothing. And in each case, that young persons health is at risk. In the states that have enacted this law as it was originally proposed, there has been no increase in the number of young women who involve their parents. Parental notification laws drive people from their neighborhood, from their neighborhood health centers to other states to seek the services that they require. It sweeps the problem of teen pregnancy out of sight, but it does not create a solution. You only have to look as far as Massachusetts to see that this is true. This law will only serve to make New Hampshire another offending state or send the teens that we care for to seek help elsewhere. I encourage you to support this committee amendment. I encourage you to think...to put yourself in others shoes, and create the compassion that comes from understanding others situations through our laws. This is a state that does not believe in government in entering into the very most private decisions of its people. This bill needs to pass as proposed by the committee amendment. Thank you.

**Question is on the adoption of the committee amendment.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Cohen.**

**The following Senators voted Yes: Gallus, Below, Odell, Peterson, O'Hearn, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 10 - Nays: 13**

**Amendment failed.**

Senator Prescott offered a floor amendment.

Sen. Prescott, Dist.23

**May 21, 2003**

**2003-1769s**

**01/09**

### **Floor Amendment to HB 763-FN**

Amend RSA 132:25, I as inserted by section 2 of the bill by replacing it with the following:

I. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove an ectopic pregnancy or the products from a spontaneous miscarriage.

SENATOR PRESCOTT: Thank you Mr. President. I rise to offer a floor amendment. This deals with the definition of "abortion" on page one. Page two of the bill. I am sorry...page one. It "means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove an ectopic pregnancy or the products from a spontaneous miscarriage." I believe that this amendment protects the Hippocratic oath of physicians when there is an emergency situation. For the bill, the first part of the bill, if I may speak to it, Mr. President. Thank you. The notice to require the notification of a parent. I believe it is a parents right to know. I do believe that it would stop the implication of that right by others and take away the knowledge of a parent or guardian, that an abortion would take place on their minor child. I also believe in the rights, not only in the rights of the parents to know, but they do also believe in the constitutional rights of the minor. This bill has that protection in Part II. The constitutionality of the bill has been upheld in the U.S. Supreme Court twice with Part II of this bill so that a minor, if they elect not to notify their parents, can go to a judge. If the judge has determined that the pregnant minor is mature and capable of giving conformed consent to the proposed abortion, would let that happen. The judge shall determine whether performance of an abortion upon her without notification of her parent, guardian or conservator would be in her best interest. There is protection of our precious young people. If the judge concluded that the minors best interest would be served, he would rule that way. Also in the bill on Part II, there is a right to a court appointed counsel. This is very important for counseling of our young, precious child that is in a situation. Therefore, I believe that this bill fits the counseling for a person in such a dire condition as that. And, there is also an appeal process. They can reach a decision promptly and without delay as to serve the best interest of the pregnant minor. If the decision was not, after counseling, after getting denied, that it should be notifying their parents, there is a quick appeal process to happen. I believe this is protecting both the right to know parents and also the right of the child. I also believe that there should be penalties. That is another section of this bill. Wrongfully denied notification is a very important part of this bill. I thank you very much Mr. President, for letting me speak to the bill and proposing and amendment. I hope that the full Senate votes ought to pass on this amendment. Thank you.

SENATOR COHEN: I am not sure if this would be a question, but it seems to me in comparing this language to the language in the bill as sent over from the House, this seems like a significant expansion of the definition of abortion. So it appears to me...should the bill pass, and should a young teenage girl use a morning after pill, RU486, which is not currently covered, that that would be currently covered and that this is a substantial expansion and would be an even more erosion of the reproductive rights as the constitution guarantees now? I suppose that is a question. Thank you.

SENATOR PRESCOTT: Thank you Senator Cohen. Reading the amendment, it is "terminating the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth." "If the female is known to be pregnant". Those are the words that are here.

SENATOR COHEN: The addition of the instrument, medicine drug, which is not in the initial bill, is a great concern to me.

SENATOR LARSEN: It is pretty clear to me that this amendment does in fact, further expand the bill so that any morning after pill even perhaps the use of higher level estrogen the morning after, could in fact be deemed to be an abortion procedure under this definition. While I understand Senator Prescotts' interest in accomplishing this, I think that it is a very dangerous step in terms of limiting medical options to people. I don't know at what point a female is known to be pregnant? Who decides when that female was known to be pregnant? There are too many questions in this amendment. It is the first that we have seen of it. It is a floor amendment. I think that I would urge the Senate to act cautiously in terms of expanding this further. It is a very dangerous next step.

SENATOR O'HEARN: Senator Prescott, as I am trying to decipher the definition, and the way that I am reading right now is that abortion can be used with a prescription, if there were any instrument, medicine or drug, but only in response to preserve the life or the health of the child, meaning the pregnant child, to remove an ectopic pregnancy or the products of this spontaneous miscarriage. Is that correct?

SENATOR PRESCOTT: No, it is not. It is "with the intention", it is "other than having the intention of protecting, increasing the probability of a live birth". That is what an abortion is described as. Other than the intention of protecting the probability...increasing the probability of a live birth. "To preserve the life or health of the child after the birth, or to remove an ectopic pregnancy or the products of this spontaneous miscarriage".

SENATOR O'HEARN: I have a follow up. I am not sure if I understand your answer so I will be more direct. Is an abortion then allowed for other reasons than ectopic pregnancy, products after a spontaneous abortion or to preserve the life of a child?

SENATOR PRESCOTT: Repeat it please?

SENATOR O'HEARN: Is an abortion allowed for other purposes than to preserve the life or health of the pregnant child, remove an ectopic pregnancy or remove the product of a spontaneous miscarriage?

SENATOR PRESCOTT: No, because that would be intentionally to terminate the pregnancy as written in the amendment.

SENATOR O'HEARN: Then no...just for clarification, then no, the abortion would not be allowed?

SENATOR PRESCOTT: Correct. You would need to have parental notification to protect the right of the parent to know.

SENATOR O'HEARN: Thank you Mr. President.

SENATOR BOYCE: Thank you Mr. President. Senator Prescott, I just want to clarify...I think that I have heard a couple of people...I would hate to say intentionally misrepresent what this says, but doesn't this, by saying that the "pregnancy of a female known to be pregnant", doesn't that mean that if someone is raped or has serious concerns the day after, that they could take the so-called morning after drugs, because they would not know that they were impregnated. They could suspect, but

would not know. You can't "know" that you are pregnant until sometime after that fact. So the morning after product would not be prevented? The notification would not be necessary for the morning after drug?

SENATOR PRESCOTT: That is correct Senator Boyce.

SENATOR ESTABROOK: Thank you Mr. President. Senator Prescott, I am trying to understand what the amendment does. Are you saying...this is in the context of parental notification, I gather you are saying?

SENATOR PRESCOTT: Yes.

SENATOR ESTABROOK: So that if the procedure that the young woman was undergoing was intended to "increase the probability of a life birth, preserve the life and health of a child, remove an ectopic pregnancy or the product of a spontaneous miscarriage, the parent would not need to be notified", is the way that I am reading this. Is that correct?

SENATOR PRESCOTT: For emergency situations, there is protection of a surgeon to be able to do his job and his democratic oath to do no harm, protect the life and not wait 48 hours for notification of a guardian or parent.

SENATOR ESTABROOK: Thank you. Follow up question. Thank you Mr. President. So if that is your intention, why isn't there also in this list of things that may constitute an emergency, the life of the mother?

SENATOR PRESCOTT: I believe in the first part of the bill, you will also find.

SENATOR ESTABROOK: You may be correct if that is already in the bill. I just would like to know where?

SENATOR PRESCOTT: Thank you very much. To protect the minors  
**TAPE INAUDIBLE**

SENATOR ESTABROOK: Thank you. Follow up. I see that wording, what about the minors health?

SENATOR PRESCOTT: That is not in there, Senator.

SENATOR ESTABROOK: Thank you.

SENATOR LARSEN: I rise to speak. I think that Senator Estabrook has found yet another problem with this amendment, which is in fact, that the language does not allow for the protection of a minors health. What happens to the women's health? Let's say that it is a very young nine-year-old, whose very life is threatened by carrying a pregnancy to term? There is no language that in fact protects the life and health of the minor in this amendment.

SENATOR BARNES: Senator Prescott, I am having a real hard time as you understand on this situation. I am so much in favor of the bill that came over from the House. If we pass that bill today and send it to the Governor, it would be signed into law maybe sometime next week. Do you honestly think that if we pass your amendment, and it gets sent over to the House, that that 400 member elephant across the way, is going to agree...remembering that the bill only passed by six votes? Can you honestly answer that question for me? What are your real thoughts on that? I have to know before I can vote for your amendment.

SENATOR PRESCOTT: Thank you Senator Barnes. I believe that the amendment strengthens the bill in terms of protecting the minor from problems and complications in a pregnancy. I believe that it is a stronger bill because of that. I believe that the House, if they deemed to pass

it then, and having it come from the Senate as a stronger bill, back to the House, I would hope that they would see it as that, as a stronger bill. To say that I have full confidence that the House would be able to pass this bill as amended by the Senate, I cannot tell you that that would happen, but I can tell you that the bill is a much better bill with this amendment.

SENATOR CLEGG: Thank you Mr. President. I am in favor of the amendment. Originally people accused us of trying to change when an abortion could happen because it said in the original bill from fertilization until birth. So what we have done now is come up with a new description, but intentionally explaining that it is not an abortion, it doesn't need parental consent for those other issues where it is a health issue. The bill already has something in it that says that a physician finds the health of a mother to be in danger, there is a waiver of notification. So what's really the story? I heard today that because I am a man, I can't possibly understand what a woman goes through in pregnancy. I will agree, but I am a father and I do understand what it is like to have to raise children and be responsible for their actions. I do know that if it's easier for them to come to me because they don't want me to know, and if the government gives them the avenue to go, they won't come. Nobody wants to stand in front of their parents and say, I did something wrong and I am sorry. So if you give them an avenue and they don't have to, and they can keep it hidden, they will. This bill says, with the amendment, that I, as a parent, have a right to stay in my children's lives until they are old enough to go on their own and make their own decisions, and be responsible for their own decisions. I heard how it would be so difficult, so scary, for a woman to go in front of a person with a black robe. But it is not scary for that same woman to go lay on a table and be operated on by a guy with a mask that she can't even see? That's not scary? But our justice system is scary? The parents are scary? Sorry, I don't buy any of it. I have kids. I have a daughter. I have done the best that I possibly could and I don't expect the government to take away my right to remain involved. Thank you Mr. President.

SENATOR BELOW: Senator Clegg. I just wanted a clarification of something that you said earlier in your statement. The bill already has a provision that would waive the principal notification requirement if the physician determined that the minors health was in danger by that delay and I wonder if you could point that out in the bill because I think that has some concerns to some of us and that we haven't found that?

SENATOR CLEGG: I can and I mentioned it because Senator Larsen had mentioned the nine year old whose very life would probably be in danger. It is on page two, line 22 it says, "The attending abortion provider certifies in the pregnant minor's medical record that the abortion is necessary to prevent the minor's death and there is insufficient time to provide the required notice."

SENATOR BELOW: Is there not a distinction between the minors death and the minors health?

SENATOR CLEGG: Not in this situation. I am sure that you wouldn't want to waive notice because the minor had a cold and the baby might make it worse.

SENATOR BELOW: Thank you.

**Recess.**



**Out of recess.**

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Sapareto.**

**Seconded by Senator Prescott.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Martel, Morse, Prescott.**

**The following Senators voted No: Below, Foster, Larsen, Barnes, Sapareto, D'Allesandro, Estabrook, Cohen.**

**Yeas: 15 - Nays: 8**

**Floor amendment adopted.**

Senator Sapareto offered a floor amendment.

Sen. Sapareto, Dist. 19

**May 20, 2003**

**2003-1715s**

**01/09**

### **Floor Amendment to HB 763-FN**

Amend the title of the bill by replacing it with the following:

AN ACT requiring parental notification before abortions may be performed on unemancipated minors under the age of 16 years.

Amend RSA 132:25 as inserted by section 2 of the bill by replacing it with the following:

132:25 Definitions. In this subdivision:

I. "Abortion" means the use of any means to terminate the pregnancy of a female known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the fetus.

II. "Abuse" means any type of harm a minor may have been subjected to or may incur as a result of notification.

III. "Commissioner" means the commissioner of the department of health and human services.

IV. "Department" means the department of health and human services.

V. "Emancipated minor" means any minor female who is or has been married or has by court order otherwise been freed from the care, custody, and control of her parents.

VI. "Guardian" means the guardian or conservator appointed under RSA 464-A, for pregnant females.

VII. "Minor" means any person under the age of 16 years.

VIII. "Parent" means one parent of the pregnant girl if one is living or the guardian or conservator if the pregnant girl has one.

Amend RSA 132:27, I(a) as inserted by section 2 of the bill by replacing it with the following:

(a) The attending abortion provider certifies in the pregnant minor's medical record that the abortion is necessary to prevent the minor's death and there is insufficient time to provide the required notice, or the attending abortion provider certifies in the minor's medical record that the minor is a victim of alleged incest, rape, or abuse; or

2003-1715s

## AMENDED ANALYSIS

This bill prohibits any abortion provider from performing an abortion on certain minors under the age of 16 years or incompetent females without giving 48 hours' written notice, in person or by certified mail, to a parent or guardian. The bill provides a procedure for alternate notice in certain circumstances.

This bill also establishes a procedure for waiver of the notice in certain circumstances.

SENATOR SAPARETO: Mr. President, I rise to offer a floor amendment. I would like to speak to that motion. Let's face it, most of today's debate is for the benefit of the public as we have all decided our position. I voted for the original committee amendment because at that point, my options were that or nothing. But I have some serious problems with this amendment, with the bill as it was passed over from the House. This amendment that I am proposing is no less constitutional than the amendment that was before us or the House version, that per the tenth circuit court of appeals. I have specific problems with this bill. Whichever way that we vote on HB 763, could possible result in an unborn child or the death of a young woman. I can't support a House version of this bill because it does nothing for parental notification. I will not vote for a bill just to gain votes as my previous vote just indicated. The House version of HB 763, as well as the one that we just voted on, has a judicial bypass that effectively negates the bill. Of the 17,000 applicants for a waiver in Massachusetts, under the same statute as we are looking at right now, all of these applications were granted except for two. With testimony in the committee, we were told that this was the exception to the rule, and the fact shows that this is the rule, not the exception. If we are in support of a true parental notification bill, judicial bypass must only be allowed for incest, rape or abuse. We are selling the public a bill of goods here, with a misleading title and uninformed editorials from local newspapers continue to mislead the public by not reading the bill. The second problem that I have with this bill is that we have an age of consent on statute right now in this state at 16. So that women who choose to consent to sex, are not...now have to provide notification at age 18. We are now asking to pass a parental notification bill for 18. How can we have those two discrepancies in ages? Make it 16. Make it 18. If a young woman is old enough to make a decision to have sex at a particular age, and she is at an age where she is old enough to accept the consequences, make this age again, 16 or 18, but they have to be consistent and this bill, with the amendment, does not do that. The very last thing wrong with this bill, is their definition of conception. That is in the original bill. I am glad that at least that issue was taken care of in my colleague, Senator Prescotts amendment. Again, this bill is a feel good legislation. I believe that this is designed improper to some of those who don't want to give real notification or for someone to ignore the details to do their homework on these bills. I can only support this version of...this version that I am presenting as an amendment, to HB 763. This amendment is true parental notification. If we want parental notification then here it is. This is it. I would ask my colleagues and urge them to support this amendment.

SENATOR FOSTER: Senator Sapareto, I want to make sure that I understand your amendment. Because trying to read it into the bill the way that I see it, it increases the exceptions whereby a provider may perform

an abortion without a notice to the minors death and in addition to situations of rape and incest. Is that the intention of the amendment? That is how I read it and maybe I am misreading it?

SENATOR SAPARETO: No. The amendment only allows parental notification under the circumstances of abuse, rape or incest. It is not for any reason other than that, such as the statutes in Massachusetts.

SENATOR FOSTER: That is what the intention of the amendment is?

SENATOR SAPARETO: That is what the intention of the amendment is as drafted.

SENATOR FOSTER: Thank you.

SENATOR BOYCE: Thank you Mr. President. Senator Sapareto. I am reading the very last two lines of this. Is it your understanding that if that provider of abortion services came to know that the pregnancy was the result of an alleged rape, incest or abuse, is it your understanding that the provider would then be required under state law to report that abuse, rape or incest to the proper authority? That they would actually have to provide that information to the authorities so that child's welfare could be taken care of through the proper agencies?

SENATOR SAPARETO: Yes, Senator thank you for the question. Actually, yes. That is under the current statute that it is required by the abortion provider.

SENATOR O'HEARN: Thank you Mr. President. Senator Sapareto, I am having a concern with line 11 on the cause, the death of the fetus. That means that an abortion can't...the medical dictionary, fetus is seven to eight weeks after fertilization. So prior to that, there cannot be any abortion?

SENATOR SAPARETO: That is correct. Actually this is the same language as taken right out of the original bill with the striking of the last part with the definition of last conception.

SENATOR O'HEARN: Thank you.

**Recess.**

**Out of recess.**

SENATOR CLEGG: Thank you Mr. President. I would like to point out that during the committee hearings, information that we have gotten since then, the question has always been asked, "What happens when you take out, or if you take out, judicial bypass"? Professor Collette, who is a law professor from a university in Texas, made the trip up here to try and help us understand why we need judicial bypass and what would happen if we didn't have it. She brought up a stack of cases from courts all over the country, that said doing so would make the bill unconstitutional. So if we vote for this amendment, we vote with the full knowledge that some courts have found it unconstitutional and therefore, you are not voting for parental notification, but in fact, voting to do away with it. Thank you Mr. President.

SENATOR SAPARETO: Thank you Mr. President. Senator Clegg, since the tenth circuit court of appeal testimony declared the version that we have just voted on before unconstitutional, are you suggesting that we send both of these versions over to the Supreme Court for an opinion?

SENATOR CLEGG: I do not. I believe that the professor who is an expert in these matters, testified clearly and succinctly, that with judicial bypass, our bill as it sits, is constitutional.

SENATOR BOYCE: If...just a hypothetical here. If someone decided that it would enhance their reelection possibilities to have on their resume, that they had voted in favor of parental notification, but they did not truly want parental notification to actually pass and become the law of the land, would it be possible for them to propose or support an amendment that they knew to be unconstitutional in order to be able to say "look, I tried...I voted to pass parental notification, look at me, I am a good vote, you want to vote for me", knowing that that bill will never pass muster in the other House, let alone through the courts. Would that be something that somebody might do if they were an unscrupulous politician?

SENATOR CLEGG: Knowing that we have no unscrupulous politicians in this chamber, I would say that it makes it a lot easier to vote for a bill that you know the court would find unconstitutional and blame the courts, because the courts are the ones that we love to blame for everything. Thank you.

SENATOR EATON (In the Chair): Let's stick to the bill and the amendments.

SENATOR O'HEARN: Thank you Mr. President. I am supporting this amendment and I disagree with Senator Clegg, that there is no judicial bypass in here. I really take offense to anyone who thinks that we are voting today to save our political career on this particular amendment or any amendment that we may have, we may vote on. I think that most of us, with whatever we have done, and whatever we will do, this one takes our hearts and our mind together, and make the right decision, and it has nothing to do with our political career, and I resent anyone bringing that forward. Thank you.

SENATOR BARNES: Thank you Mr. President. I am not going to go through the same speech that I went through upstairs at our caucus, but I am going to say to you all, every one of us got elected by the folks out there in our state of New Hampshire. Every one of us. All 24 of us have a right to our opinions. Damn it all, we shouldn't be up here taking shots at each other. This is a tough issue. I don't think that we should be making offhand comments. I think that it is out of place and it is not senatorial. This Chamber has been here a long time and it is going to be here a long time after we leave it. So let's leave it in good hands and not dirty it and sully it with lousy comments against our colleagues. I disagree with Senator Peterson's amendment, but I didn't get up and blast it. I just voted against it. I disagree with Senator Sapareto's amendment, I am not going to get up and say that he is a bum because he's got it in here, I am going to disagree with yours too, Senator O'Hearn, and that doesn't mean that you are a bum. I am going to tell you that I am going to vote for Senator Clegg's when he brings in the original bill. I am going to vote for it because I think it is the right way to go. But I think that dirtiness and nasty little comments are out of place. It is a long day that we have got ahead of us. We have a lot of business to do. We represent the state of New Hampshire, everyone of us, so let's act like ladies and gentlemen and cut the baloney and let's do it right. Let's be ladies and gentlemen. Thank you.

SENATOR KENNEY: Senator Sapareto, I have a technical question. In your amendment, it mentions that the minor is the age of 16 years or under. I understand in some discussion, Maine, whatever parental no-

tification that they have, whatever version, that 18 years of age and under is considered a minor. Do you know of any other parental notification bills throughout the country that a minor is considered 16 and under?

SENATOR SAPARETO: No I don't; however, of course there may be different ages for age of consent as well. However, this state happens to be 16 for age of consent, and I feel that it is very important that both of these be consistent.

SENATOR KENNEY: Thank you.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Sapareto.**

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Gallus, Below, Odell, Peterson, O'Hearn, Foster, Larsen, Gatsas, Sapareto, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Clegg, Barnes, Martel, Morse, Prescott.**

**Yeas: 12 - Nays: 11**

**Floor amendment adopted.**

### **PARLIAMENTARY INQUIRY**

SENATOR BARNES: Mr. President, parliamentary inquiry?

SENATOR EATON (In the Chair): Go ahead.

SENATOR BARNES: Does this vote that we just made, override the one that we made previously? Is that amendment that we voted 15 to 8 for, that this body did, is no longer in existence?

SENATOR EATON (In the Chair): That is correct. This amendment supercedes the previous one.

SENATOR BARNES: This amendment has defeated whose amendment, Senator Prescott's amendment? That is gone. It is history. We are now working off of...this is what is going to go over to the House?

SENATOR EATON (In the Chair): That is what will be going over to the House.

SENATOR BARNES: Which 12 members in this body adopted.

SENATOR EATON (In the Chair): Unless we adopt a further amendment.

SENATOR BARNES: Thank you very much.

Senator O'Hearn offered a floor amendment.

Sen. O'Hearn, Dist. 12

**May 21, 2003**

**2003-1767s**

**01/09**

### **Floor Amendment to HB 763-FN**

Amend the title of the bill by replacing it with the following:

AN ACT relative to consent before abortions may be performed on minors.

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; Consent Prior to Abortion. Amend RSA 132 by inserting after section 24 the following new subdivision:

Consent Prior to Abortion

132:25 Definitions. In this subdivision:

I. "Abortion" means the intentional interruption of a pregnancy by the application of external agents, whether chemical or physical, or the ingestion of chemical agents.

II. "Counselor" means a person who is:

- (a) A psychiatrist.
- (b) A psychologist licensed under RSA 330-A:16.
- (c) A clinical social worker licensed under RSA 330-A:18.
- (d) An ordained member of the clergy.
- (e) A physician's assistant licensed under RSA 328-D.
- (f) A nurse practitioner licensed under RSA 326-B.
- (g) A guidance counselor certified under RSA 21-N:9, II(s).
- (h) A registered or practical nurse licensed under RSA 326-B:6 or 326-B:7.

III. "Minor" means a person under the age of 18 years.

132:26 Prohibitions; Exceptions. No person shall knowingly perform an abortion upon a pregnant minor unless:

I. The attending physician has received and will make part of the medical record the informed written consent of the minor and one parent, guardian, or adult family member;

II. The attending physician has secured the informed written consent of the minor in accordance with RSA 132:27 and the minor, under all the surrounding circumstances, is mentally and physically competent to give consent;

III. The minor has received the information and counseling required under RSA 132:28, has secured written verification of receiving the information and counseling, and the attending physician has received and will make part of the medical record the informed written consent of the minor and the written verification of receiving the information and counseling required under RSA 132:28; or

IV. Any court of competent jurisdiction issues an order under RSA 132:30 on petition of the minor or the next friend of the minor for purposes of filing a petition for the minor, granting:

(a) To the minor majority rights for the sole purpose of consenting to the abortion and the attending physician has received the informed written consent of the minor; or

(b) To the minor consent to the abortion, when the court has given its informed written consent and the minor is having the abortion willingly, in compliance with RSA 132:31.

132:27 Informed Consent; Disallowance of Recovery.

I. No physician may perform an abortion upon a minor unless, prior to performing the abortion, the attending physician received the informed written consent of the minor.

II. To ensure that the consent for an abortion is informed consent, the attending physician shall:

(a) Inform the minor in a manner which, in the physician's professional judgment, is not misleading and which will be understood by the minor, of at least the following:

(1) According to the physician's best judgment the minor is pregnant;

(2) The number of weeks of duration of the pregnancy; and

(3) The particular risks associated with the minor's pregnancy, the abortion technique that may be performed and the risks involved for both;

(b) Provide the information and counseling described in RSA 132:28 or refer the minor to a counselor who will provide the information and counseling described in RSA 132:28; and

(c) Determine whether the minor is, under all the surrounding circumstances, mentally and physically competent to give consent.

III. No recovery may be allowed against any physician upon the grounds that the abortion was rendered without the informed consent of the minor when:

(a) The physician, in obtaining the minor's consent, acted in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; or

(b) The physician has received and acted in good faith on the informed written consent to the abortion given by the minor to a counselor.

#### 132:28 Information and Counseling for Minors.

I. The provision of information and counseling by any physician or counselor for any pregnant minor for decision making regarding pregnancy shall be in accordance with this section.

(a) Any physician or counselor providing pregnancy information and counseling under this section shall, in a manner that will be understood by the minor:

(1) Explain that the information being given to the minor is being given objectively and is not intended to coerce, persuade, or induce the minor to choose either to have an abortion or to carry the pregnancy to term;

(2) Explain that the minor may withdraw a decision to have an abortion at any time before the abortion is performed or may reconsider a decision not to have an abortion at any time within the time period during which an abortion may legally be performed;

(3) Clearly and fully explore with the minor the alternative choices available for managing the pregnancy, including:

(A) Carrying the pregnancy to term and keeping the child;

(B) Carrying the pregnancy to term and placing the child with a relative or with another family through foster care or adoption;

(C) The elements of prenatal and postnatal care; and

(D) Having an abortion;

(4) Explain that public and private agencies are available to provide birth control information and that a list of these agencies and the services available from each will be provided if the minor requests;

(5) Discuss the possibility of involving the minor's parents, guardian, or other adult family members in the minor's decision making concerning the pregnancy and explore whether the minor believes that involvement would be in the minor's best interests; and

(6) Provide adequate opportunity for the minor to ask any questions concerning the pregnancy, abortion, child care and adoption, and provide the information the minor seeks or, if the person cannot provide the information, indicate where the minor can receive the information.

(b) After the person provides the information and counseling to a minor as required by this section, such person shall have the minor sign and date a form stating that:

(1) The minor has received information on prenatal care and alternatives to abortion and that there are agencies that will provide assistance;

(2) The minor has received an explanation that the minor may withdraw an abortion decision or reconsider a decision to carry a pregnancy to term;

(3) The alternatives available for managing the pregnancy have been clearly and fully explored with the minor;

(4) The minor has received an explanation about agencies available to provide birth control information;

(5) The minor has discussed with the person providing the information and counseling the possibility of involving the minor's parents, guardian, or other adult family members in the minor's decision making about the pregnancy;

(6) The reasons for not involving the minor's parents, guardian or other adult family members are put in writing on the form by the minor or the person providing the information and counseling; and

(7) The minor has been given an adequate opportunity to ask questions.

II. The person providing the information and counseling shall also sign and date the form, and include his or her address and telephone number. The person shall keep a copy for his or her files and shall give the form to the minor or, if the minor requests and if the person providing the information is not the attending physician, transmit the form to the minor's attending physician.

132:29 Presumption of Validity of Informed Written Consent; Rebuttal. An informed consent which is evidenced in writing containing information and statements provided in RSA 132:28 and which is signed by the minor shall be presumed to be a valid informed consent. This presumption may be subject to rebuttal only upon proof that the informed consent was obtained through fraud, deception, or misrepresentation of material fact.

132:30 Court Order Concerning Consent to Abortion. The court may issue an order for the purpose of consenting to the abortion by the minor under the following circumstances and procedures:

I.(a) The minor or next friend of the minor for the purposes of filing a petition may make an application to a court of competent jurisdiction which shall assist the minor or next friend in preparing the petition. The minor or the next friend of the minor shall file a petition setting forth:

(1) The initials of the minor;

(2) The age of the minor;

(3) That the minor has been fully informed of the risks and consequences of the abortion;

(4) That the minor is of sound mind and has sufficient intellectual capacity to consent to the abortion;

(5) That, if the court does not grant the minor majority rights for the purpose of consent to the abortion, the court should find that the abortion is in the best interest of the minor and give judicial consent to the abortion;

(6) That, if the minor does not have private counsel, that the court may appoint counsel.

(b) The minor or the next friend shall sign the petition.

II. The petition is a confidential record and the court files on the petition shall be impounded.

III.(a) A hearing on the merits of the petition shall be held as soon as possible within 5 days of the filing of the petition. If any party is unable to afford counsel, the court shall appoint counsel at least 24 hours before the time of the hearing. At the hearing, the court shall hear evidence relating to:



(1) The emotional development, maturity, intellect and understanding of the minor.

(2) The nature, possible consequences and alternatives to the abortion.

(3) Any other evidence that the court may find useful in determining whether the minor should be granted majority rights for the purpose of consenting to the abortion or whether the abortion is in the best interest of the minor.

(b) The hearing on the petition shall be held as soon as possible within 5 days of the filing of the petition. The court shall conduct the hearing in private with only the minor, interested parties as determined by the court, and necessary court officers or personnel present. The record of the hearing is not a public record.

IV. In the decree, the court shall for good cause:

(a) Grant the petition for majority rights for the sole purpose of consenting to the abortion;

(b) Find the abortion to be in the best interest of the minor and give judicial consent to the abortion, setting forth the grounds for the finding; or

(c) Deny the petition only if the court finds that the minor is not mature enough to make her own decision and that the abortion is not in her best interest.

V. If the petition is allowed, the informed consent of the minor, pursuant to a court grant of majority rights or the judicial consent, shall bar an action by the parent or guardian of the minor on the grounds of battery of the minor by those performing the abortion. The immunity granted shall only extend to the performance of the abortion and any necessary accompanying services which are performed in a competent manner.

VI. The minor may appeal an order issued in accordance with this section to the superior court. The notice of appeal shall be filed within 24 hours from the date of issuance of the order. Any record on appeal shall be completed and the appeal shall be perfected within 5 days from the filing of notice to appeal. The supreme judicial court shall, by court rule, provide for expedited appellate review of cases appealed under this section.

132:31 Abortion Performed Against the Minor's Will. No abortion may be performed on any minor against her will, except that an abortion may be performed against the will of a minor pursuant to a court order described in RSA 132:30 that the abortion is necessary to preserve the life of the minor.

132:32 Violation; Penalties. Any person who knowingly performs or aids in the performance of an abortion in violation of this subdivision shall be guilty of a misdemeanor. Any attending physician or counselor who knowingly fails to perform any action required by this subdivision commits a civil violation for which a forfeiture of not more than \$1,000 may be assessed for each violation.

132:33 Severability. If any provision of this subdivision or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or applications of this subdivision which can be given effect without the invalid provisions or applications, and to this end, the provisions of this subdivision are severable.

2 Effective Date. This act shall take effect January 1, 2004.

2003-1767s

## AMENDED ANALYSIS

This bill requires the informed consent of the pregnant minor before an abortion may be performed on such minor under certain circumstances. This bill encompasses a court procedure for the purpose of consenting to the abortion under certain circumstances.

SENATOR O'HEARN: Thank you Mr. President. I have already spoken on how important I feel counseling is when our young daughters are in a predicament like this. I also believe that young men need counseling when they are in predicaments. I also value the privacy between a physician and their patient. Therefore, I offer before you, an amendment to HB 763 with a definition of abortion. With prohibitions. I will just quickly go through it, because I think that most people have seen this. I know that I reviewed this with members of my side and have talked with members on the other side. I feel that this is a far better way to address parental notification. It first requires that the attending physician make medical record and informed consent of the minor and one parent, guardian or adult family member, or that the attending physician has secured the informed written consent of the minor under all following circumstances, and is mentally and physically competent to give consent, and that the minor has received information and counseling. I preserve that right between a physician and their patient. It offers any court of competent jurisdiction on petition for granting that the minor be given majority rights and that the minor be able to consent to abortion, and that no physician, prior to performing the abortion, shall give consent until they have secured the best information possible that the minor is pregnant, the number of weeks of the pregnancy, the particular risks involved, provide information and counseling and determine physical competency. Information for counseling is spelled out. It has to be done objectively and not to coerce the child. The minor may withdraw from the decision to have an abortion at any time. Information has to be given to the child on carrying the pregnancy to term. Putting the child up to adoption or to foster care. And the elements of prenatal and post natal care, and what the concerns are about having an abortion. They also discuss the possibility of involving a minor, the minors parents. And the minor must sign and date the form that these things have been done. Also required is that there are reasons for not involving the minors parents. That must be written and signed onto. A court order concerning consent to an abortion petition may be brought forward and the court then, decides the competency of the child. The minor is...the court has to prove that the minor is of sound mind and has sufficient intellectual capacity to consent to abortion. The court should find that the abortion is in the best interest of the child. The hearing on the merits of the petition shall be held as soon as possible within five days, and evidence shall relate to the emotional development, maturity intellect and understanding of the minor. The nature, possible consequences and alternatives to abortion, and any other evidence that the court may find useful in determining that the abortion should take place. In the decree, the court shall, for good cause, grant the petition for majority rights, find that the abortion shall be in the best interest of the child, or deny petition if the minor is not mature enough. I sincerely and truly think that we need to pay attention to what our young women are going through. What our parenting skills are or lack thereof, and whether our parenting skills are strong or weak, our children still need counseling. Heck, we get into something

like this, we are going to need counseling to get through this. I am asking you to consider this. This is something that we have to take a look at seriously. This is something that we shouldn't take lightly. But the child needs more than having to navigate whatever they have to navigate to get there. They need the counseling before they get there. I ask you to support amendment 1767.

SENATOR PETERSON: Thank you Mr. President. I would like to support my colleague Senator O'Hearn in bringing forward this amendment. Although the original committee amendment, frankly, is my preference, as it mirrors in some respect, the Connecticut law, this amendment, which mirrors the Maine law, is a way to do parental notification that will strengthen the notification requirements, although I am not 100 percent excited about the specter of having young people have to go to court, which is of course what is involved with this. I do think that it is a reasonable compromise, and hope that despite the emotion of the moment, the Senators here present, will consider it on its merits. Thank you.

SENATOR LARSEN: I, too, rise to speak in support of this alternative. It is a law which has worked in Maine and it is preferable in some respects to the original bill as we have it before us. So I suggest that people look carefully at this process as it has worked in Maine and it has resulted in safe procedures for young women in Maine.

SENATOR BARNES: Senator Larsen, isn't the state of Maine the one that stole our shipyard in Portsmouth? Is that the same state we are talking about?

SENATOR LARSEN: That is the same state of Maine.

SENATOR BARNES: Thank you.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Clegg.**

**The following Senators voted Yes: Gallus, Below, Odell, Peterson, O'Hearn, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 10 - Nays: 13**

**Floor amendment failed.**

**Recess.**

**Out of recess.**

Senator Prescott offered a floor amendment.

Sen. Prescott, Dist. 23

**May 22, 2003**

**2003-1780s**

**01/09**

### **Floor Amendment to HB 763-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** requiring parental notification before abortions may be performed on unemancipated minors.

Amend the bill by replacing all after the enacting clause with the following:

1 Legislative Purpose and Findings.

I. It is the intent of the legislature in enacting this parental notification provision to further the important and compelling state interests of protecting minors against their own immaturity, fostering the family structure and preserving it as a viable social unit, and protecting the rights of parents to rear children who are members of their household:

II. The legislature finds as fact that:

(a) Immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences.

(b) The medical, emotional, and psychological consequences of abortion are serious and can be lasting, particularly when the patient is immature.

(c) The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of abortion are not necessarily related.

(d) Parents ordinarily possess information essential to a physician's exercise of best medical judgment concerning the child.

(e) Parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention after the abortion.

III. The legislature further finds that parental consultation is usually desirable and in the best interest of the minor.

2 New Subdivision; Parental Notification Prior to Abortion. Amend RSA 132 by inserting after section 24 the following new subdivision:

Parental Notification Prior to Abortion

132:25 Definitions. In this subdivision:

I. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove an ectopic pregnancy or the products from a spontaneous miscarriage.

II. "Commissioner" means the commissioner of the department of health and human services.

III. "Department" means the department of health and human services.

IV. "Emancipated minor" means any minor female who is or has been married or has by court order otherwise been freed from the care, custody, and control of her parents.

V. "Guardian" means the guardian or conservator appointed under RSA 464-A, for pregnant females.

VI. "Minor" means any person under the age of 18 years.

VII. "Parent" means one parent of the pregnant girl if one is living or the guardian or conservator if the pregnant girl has one.

132:26 Notification Required.

I. No abortion shall be performed upon an unemancipated minor or upon a female for whom a guardian or conservator has been appointed pursuant to RSA 464-A because of a finding of incompetency, until at least 48 hours after written notice of the pending abortion has been delivered in the manner specified in paragraphs II and III.

II. The written notice shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent.

III. In lieu of the delivery required by paragraph II, notice shall be made by certified mail addressed to the parent at the usual place of abode

of the parent with return receipt requested and with restricted delivery to the addressee, which means the postal employee shall only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

132:27 Waiver of Notice.

I. No notice shall be required under RSA 132:26 if:

(a) The attending abortion provider certifies in the pregnant minor's medical record that the abortion is necessary to prevent the minor's death and there is insufficient time to provide the required notice; or

(b) The person or persons who are entitled to notice certify in writing that they have been notified.

II. If such a pregnant minor elects not to allow the notification of her parent or guardian or conservator, any judge of a court of competent jurisdiction shall, upon petition, or motion, and after an appropriate hearing, authorize an abortion provider to perform the abortion if said judge determines that the pregnant minor is mature and capable of giving informed consent to the proposed abortion. If said judge determines that the pregnant minor is not mature, or if the pregnant minor does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without notification of her parent, guardian, or conservator would be in her best interests and shall authorize an abortion provider to perform the abortion without such notification if said judge concludes that the pregnant minor's best interests would be served thereby.

(a) Such a pregnant minor may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court-appointed counsel, and shall, upon her request, provide her with such counsel.

(b) Proceedings in the court under this section shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interest of the pregnant minor. In no case shall the court fail to rule within 7 calendar days from the time the petition is filed. A judge of the court who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

(c) An expedited confidential appeal shall be available to any such pregnant minor for whom the court denies an order authorizing an abortion without notification. The court shall make a ruling within 7 calendar days from the time of the docketing of the appeal. An order authorizing an abortion without notification shall not be subject to appeal. No filing fees shall be required of any such pregnant minor at either the trial or the appellate level. Access to the trial court for the purposes of such a petition or motion, and access to the appellate courts for purposes of making an appeal from denial of the same, shall be afforded such a pregnant minor 24 hours a day, 7 days a week.

132:28 Penalty. Performance of an abortion in violation of this subdivision shall be a misdemeanor and shall be grounds for a civil action by a person wrongfully denied notification. A person shall not be held liable under this section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant minor regarding infor-

mation necessary to comply with this section are bone fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

132:29 Severability. If any provision of this subdivision or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or applications of this subdivision which can be given effect without the invalid provisions or applications, and to this end, the provisions of this subdivision are severable.

3 Effective Date. This act shall take effect December 31, 2003.

## 2003-1780s

### AMENDED ANALYSIS

This bill prohibits any abortion provider from performing an abortion on certain minors or incompetent females without giving 48 hours' written notice, in person or by certified mail, to a parent or guardian. The bill provides a procedure for alternate notice in certain circumstances.

This bill also establishes a procedure for waiver of the notice in certain circumstances.

SENATOR PRESCOTT: Thank you Mr. President. I rise to offer a floor amendment. As you recall earlier this morning, I presented an amendment that changes the definition of abortion. That is in this bill. Also in this bill is the change of the effective date. The basis of the bill is the House version with the amendments on the abortion definition. Then I changed the effective date from January 1, 2004 to December 31, 2003. If you pass this bill it would take effect this year instead of next year. Thank you Mr. President.

SENATOR BARNES: Thank you Mr. President. As those of you who are keeping score, know that I voted against Senator Prescott's amendment. I was quoted in the newspaper as saying that I would vote for no amendment, because I figure that they are not going to make it amended over in the House. I also told roughly 50 people that called me on the phone, "don't worry, I will not vote for the amendment." I am going to have to say that...there is an old saying that "women have a right to change their mind." Me, as a male Senator, I have a right to change my mind and I am going to support Senator Prescott's amendment because I don't see that we have the votes to pass the original bill from the House. So the goose and the gander or the gander and the goose, so I am going to support Senator Prescott's amendment. I apologize to the people that I told that I would not vote for the amendment. I apologize to the Concord Monitor for telling them a falsehood, but I guess as a male Senator, I have a right to change my mind.

SENATOR SAPARETO: Thank you Mr. President. Mr. President, this amendment is the same amendment that we voted on before, Senator Prescott's amendment, only a change in the effective date. Whether I am the lone Republican hanging out to dry again or not, I am sticking to my principles on this and I cannot support it with the flaws that I mentioned in my previous statements. I would hope that other Senators would also uphold their vote and pass the correct version which I believe is the best version of the parental notification bill. I will not change my vote.

SENATOR ROBERGE: Mr. President, I want to echo Senator Barnes remarks. I promised a lot of people that I would vote for the House version without amendment, but I have become convinced that the latest Senator Prescott amendment will pass and I have changed my mind. I

am going to vote for it. I think that it is a good bill and it is the best that we can do this year. I am very intent that we should pass a parental notification bill. Thank you.

**SENATOR BELOW:** Yes, I understand that this amendment changes the definition of minor back to under the age of 18 from under age 16, as the bill now reads under the age of 16 being above the age. Sixteen and seventeen being an age of consent for sexual intercourse. So I would like to request that page two, line ten, be divided in the vote on the question, so that particular change could be handled separately.

**Senator Below moved to divide the question.**

**The Chair ruled the floor amendment non divisible.**

**SENATOR LARSEN:** I rise to oppose this action. I think that most of us recognized in what we might refer to as the Sapareto amendment, we were in fact correcting the definition of what is truly a minor, that we were...at least a minor who can consent...that we were correcting some of the flaws of the original bill and the amendment that you have before you has none of those correct features and I would urge you to vote no on this amendment. Leaving what is a better bill to go to the House.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Sapareto.**

**The following Senators voted Yes: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Clegg, Gatsas, Barnes, Martel, Morse, Prescott.**

**The following Senators voted No: Gallus, Below, Odell, Peterson, O'Hearn, Foster, Larsen, Sapareto, D'Allesandro, Estabrook, Cohen.**

**Yeas: 12 - Nays: 11**

**Floor amendment adopted.**

**SENATOR PRESCOTT:** Mr. President, what is the motion to reconsider this amendment that we just passed? Do I just say reconsider and then ask that we vote again on it? And would that then end the ability for someone else to reconsider?

**Recess.**

**Out of recess.**

**SENATOR EATON (In the Chair):** The question has been answered.

**SENATOR PRESCOTT:** Thank you Mr. President. I withdraw my request.

**Senator Boyce moved the question.**

**Adopted.**

**Question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Boyce.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Clegg, Gatsas, Barnes, Martel, Morse, Prescott.**

**The following Senators voted No: Gallus, Below, Odell, Peterson, O'Hearn, Foster, Larsen, Sapareto, D'Allesandro, Estabrook, Cohen.**

**Yeas: 12 - Nays: 11**

**Adopted.**

**Ordered to third reading.**

**Recess.**

**Out of recess.**

**HB 131**, relative to enforcement of negotiable instruments under Article 3 of the Uniform Commercial Code. Banks Committee. Ought to pass, Vote 2-0. Senator Odell for the committee.

SENATOR ODELL: Thank you Mr. President. I move HB 131 ought to pass. An instrument is a written, unconditional promise to pay a fixed amount of money. Current legislation states that the validity of an instrument is negated when the original is lost. This bill will protect the validity of an instrument as long as it has been proven to exist. It is not unusual for banks to originate transactions and have those documents get lost or stolen, usually because of the large volume of instruments involved. The burden of proof rests with the bank to certify a true copy of the original. This legislation clarifies the intent of the law by allowing an instrument to be enforceable if proven to exist. The Banks Committee asks your support for the motion of ought to pass. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 159**, relative to meetings of the directors of nondepository trust companies. Banks Committee. Ought to pass, Vote 2-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you Mr. President. I move HB 159 ought to pass. The Banking Committee unanimously on a 2-0 vote, passed it. It is good. Thank you for your support.

**Adopted.**

**Ordered to third reading.**

**HB 160**, relative to removal or replacement of trustees. Banks Committee. Ought to pass, Vote 2-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you Mr. President. Ditto.

**Adopted.**

**Ordered to third reading.**

**HB 404**, relative to common trust funds. Banks Committee. Ought to pass, Vote 2-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President. Very briefly, this is legislation to create...to help solve a problem wherein small banks sometimes have their trusts in two different banks. This bill allows them to have it one single unity because of the audits that are performed sometimes cost \$20,000 or \$30,000 and if it is two different accounts, then the same trust can be assigned two different audits. We ask that this be passed as it makes common sense for small trust accounts. Thank you.

**Adopted.**

**Ordered to third reading.**



Senator Foster Rule #42 on HB 404.

**HB 798**, relative to gifts by fiduciaries. Banks Committee. Ought to pass with amendment, Vote 2-0. Senator Barnes for the committee.

**Banks**

**May 14, 2003**

**2003-1629s**

**01/09**

### **Amendment to HB 798**

Amend the bill by replacing all after the enacting clause with the following:

1 Estate Planning by Guardian. Amend RSA 464-A:26-a, III(b) through (g) to read as follows:

(b) The anticipated results including any income, estate, or inheritance tax savings, *and, if the gift is being made in order to qualify the ward for Medicaid, any resulting period of Medicaid disqualification;*

(c) The ward's wishes, if known;

(d) The ward's financial condition, including present and anticipated future expenses for maintenance, support, and medical care, debts, and support obligations;

(e) The ward's medical condition;

(f) The ward's prior estate planning action, including significant life-time gifts, will, beneficiary designations, joint ownership, or trusts; [and]

(g) The ward's family situation, including the family members who would inherit from the ward if the ward dies intestate;

*(h) Whether the gift is intended to reduce the ward's assets or income in order to qualify the ward for Medicaid or other governmental benefits;*

*(i) The ward's housing situation during the 12 months prior to the filing of the petition; and*

*(j) A description of the care and services that the ward requires and is currently receiving.*

2 Estate Planning by Guardian. Amend RSA 464-A:26-a, V to read as follows:

V. Before authorizing the guardian to make lifetime gifts or to plan for the testamentary distribution of the ward's estate, the probate court must find, by a preponderance of the evidence, that[-

~~(a)]~~ the proposed gifts and/or testamentary plan are consistent with the ward's wishes[;] or, *based on the circumstances as they then exist, that:*

~~[(b)]~~ (a) The testamentary distribution of the ward's estate will minimize taxation and/or facilitate distribution of the ward's estate to family, friends, or charities who would be likely recipients of gifts from the ward;

*(b) The proposed gift is not likely to adversely affect the ward's housing options, access to care and services, or general welfare;*

*(c) The proposed gift does not create a foreseeable risk that the ward will be deprived of sufficient assets to cover his or her needs during any period of medicaid ineligibility that would result from the proposed gift; and*

*(d) The proposed gift is not likely to result in premature or unnecessary nursing home placement or institutionalization of the ward, or compromise the ward's access to care or services in the least restrictive setting in which his or her needs can be met.*

***VI. The probate court, prior to authorizing a lifetime gift, shall appoint a guardian ad litem if the proposed gift benefits the guardian personally or otherwise creates a potential conflict of interest between the ward's interests and the guardian's personal interests.***

***VII. The department of health and human services, county attorney, and the department of justice shall be notified and shall have the opportunity to address the court in any proceeding under this section if the court has concerns relative to:***

***(a) The impact on the ward of any period of Medicaid ineligibility that would result from the proposed gift; or***

***(b) Whether the ward has been the victim of a crime or has been or is at risk of being abused, neglected, or exploited within the meaning of RSA 161-F:43.***

3 Powers of Attorney; Disability or Incompetence of Principal. Amend RSA 506:6, V to read as follows:

***V.(a) An attorney in fact is not authorized to make gifts, pursuant to the durable power of attorney, to the attorney in fact or to others unless:***

***(1) The durable power of attorney explicitly authorizes [such] gifts; and***

***(2) The proposed gift will not leave the principal without sufficient assets or income to provide for the principal's care without relying on Medicaid, other public assistance or charity, unless the authority to make such a gift is expressly conferred, or the gift is approved in advance by the court upon a determination that the gift is authorized in accordance with RSA 506:7, III(e).***

***(b) No attorney in fact may make a gift to him or herself of property belonging to the principal unless the terms of the power of attorney explicitly provide for the authority to make gifts to the attorney in fact, or the gift is approved in advance by the court upon a determination that the gift is authorized in accordance with RSA 506:7, III(e).***

***(c) This paragraph shall not in any way impair the right or power of the principal, by express words in the power of attorney, to further authorize, expand, or limit the authority of any agent to make gifts of the principal's property.***

4 Powers of Attorney. Amend RSA 506:6, VI-VIII to read as follows:

***VI.(a) [The following] A disclosure statement, signed by the principal, [may accompany] in substantially the following form, shall be affixed to a durable power of attorney:***

**INFORMATION CONCERNING THE DURABLE POWER OF ATTORNEY**

**THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT YOU SHOULD KNOW THESE IMPORTANT FACTS:**

Notice to the Principal: As the "Principal," you are using this Durable Power of Attorney to grant power to another person (called the "Agent" or "Attorney in Fact") to make decisions, including, but not limited to, decisions concerning your money, property, or both, and to use your money, property, or both on your behalf. If this written Durable Power of Attorney does not limit the powers that you give to your Agent, your Agent will have broad and sweeping powers to sell or otherwise dispose of your property, and to spend your money without advance notice to you or approval by you. Under this document, your agent will continue to have these powers after you become incapacitated, and unless otherwise in-

icated your Agent will have these powers before you become incapacitated. You have the right to retain this Power and not to release this Power until you instruct your attorney or any other person who may hold this Power of Attorney to so release it to your Agent pursuant to written instructions. You have the right to revoke or take back this Durable Power of Attorney at any time, so long as you are of sound mind. If there is anything about this Durable Power of Attorney that you do not understand, you should seek professional advice.

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Principal

(b) The language required by this paragraph shall not confer any powers to the agent that are not otherwise contained in the durable power of attorney.

VII.(a) An agent~~[, prior to acting in the capacity of agent, may execute and affix]~~ ***shall have no authority to act as agent under the power of attorney unless the agent has first executed and affixed to the power of attorney an acknowledgment in substantially the following form:***

I, \_\_\_\_\_, have read the attached power of attorney and am the person identified as the Agent for the Principal. I hereby acknowledge that when I act as Agent or "attorney in fact," I am given power under this Durable Power of Attorney to make decisions about money, property, or both belonging to the Principal, and to spend the Principal's money, property, or both on the Principal's behalf, in accordance with the terms of this Durable Power of Attorney. This Durable Power of Attorney is valid only if the Principal is of sound mind when the Principal signs it. When acting in the capacity of Agent, I am under a duty (called a "fiduciary duty") to observe the standards observed by a prudent person, which means the use of those powers that is reasonable in view of the interests of the Principal and in view of the way in which a person of ordinary judgment would act in carrying out that person's own affairs. If the exercise of my acts is called into question, the burden will be upon me to prove that I acted under the standards of a fiduciary. As the Agent, I am not entitled to use the money or property for my own benefit or to make gifts to myself or others unless the Durable Power of Attorney specifically gives me the authority to do so. As the Agent, my authority under this Durable Power of Attorney will end when the Principal dies and I will not have authority to manage or dispose of any property or administer the estate unless I am authorized to do so by a New Hampshire Probate Court. If I violate my fiduciary duty under this Durable Power of Attorney, I may be liable for damages and may be subject to criminal prosecution. If there is anything about this Durable Power of Attorney, or my duties under it, that I do not understand, I understand that I should seek professional advice.

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Agent

(b) ***The acknowledgement by the agent need not be signed when the durable power of attorney is executed as long as it is executed prior to the agent exercising the power granted under the durable power of attorney.***

VIII. ~~[Nothing in paragraphs V-VII of this section shall render ineffective a durable power of attorney validly executed under New Hampshire law]~~

(a) ***A power of attorney shall be valid if it:***

(1) ***Is valid under common law or statute existing at the time of execution; or***

**(2) *Has been determined by the court to be valid upon the filing of a petition pursuant to RSA 506:7.***

**(b) *Failure to comply with paragraph VI shall not invalidate an otherwise valid durable power of attorney, subject to the provisions of RSA 506:7, IV(b).***

5 Powers of Attorney; Limitations on Agent. Amend RSA 506:7, I(g) to read as follows:

**(g) *The department of justice, the department of health and human services, or the county attorney.***

6 New Subparagraph; Powers of Attorney; Limitations on the Agent. Amend RSA 506:7, III by inserting after subparagraph (d) the following new subparagraph to read as follows:

**(e) To determine that particular gifts or other transactions are authorized. In determining the authority of an agent to make a gift, the court shall consider:**

**(1) Evidence of the principal's intent;**

**(2) The principal's personal history of making or joining in the making of lifetime gifts;**

**(3) The principal's estate plan;**

**(4) The principal's foreseeable obligations and maintenance needs and the impact of the proposed gift on the principal's housing options, access to care and services, and general welfare;**

**(5) The income, gift, estate or inheritance tax consequences of the transaction;**

**(6) Whether the proposed gift creates a foreseeable risk that the principal will be deprived of sufficient assets to cover his or her needs during any period of Medicaid ineligibility that would result from the proposed gift; and**

**(7) Whether the proposed gift is likely to result in premature or unnecessary nursing home placement or institutionalization of the principal, or compromise the principal's access to care or services in the least restrictive setting in which his or her needs can be met.**

7 Powers of Attorney; Limitations on the Agent. Amend RSA 506:7, IV to read as follows:

**IV.(a) The court may hold hearings, *issue injunctions*, make orders and decrees, and take other actions that are necessary or proper in making determinations *and providing relief* on matters presented by a petition filed under paragraph III.**

**(b) When a gift or transfer made by an agent is challenged in a petition filed under paragraph III of this section, the gift or transfer shall be presumed to be lawful if the durable power of attorney is accompanied by the disclosure statement and acknowledgement drafted in accordance with RSA 506:6, VI and VII, and explicitly authorizes such gifts or transfers *as set forth in RSA 506:6, V*. However, if the petitioner establishes that the agent made a transfer for less than adequate consideration, and the transfer is not explicitly authorized by a durable power of attorney drafted in accordance with RSA 506:6, VI and VII, the agent shall be required to prove by a preponderance of evidence that the transfer was authorized and was not a result of undue influence, fraud, or misrepresentation.**

8 New Paragraphs; Powers of Attorney; Limitations on the Agent. Amend RSA 506:7 by inserting after paragraph VI the following new paragraphs:

**VII. The probate court, prior to authorizing a lifetime gift in a proceeding under this section, shall appoint a guardian ad litem if the proposed**

gift would benefit the agent personally or otherwise create a potential conflict of interest between the principal's interests and the agent's personal interests.

VIII. The department of health and human services, county attorney, and the department of justice shall be notified and shall have the opportunity to address the court in any proceeding under this section if the court has concerns relative to:

(a) The impact on the principal of any period of Medicaid ineligibility that would result from the proposed gift; or

(b) Whether the principal has been the victim of a crime or has been or is at risk of being abused, neglected, or exploited within the meaning of RSA 161-F:43.

9 Effective Date. This act shall take effect January 1, 2004.

SENATOR BARNES: Thank you Mr. President. This is a terrific bill. It passed Banks 2-0. The good news is that there are no amendments coming forward. Please support the committee on their ought to pass with amendment vote.

SENATOR BOYCE: There is not enough of the existing RSA in here for me to understand exactly what this means. Does this make it less difficult or more difficult for someone to give away their assets in order to qualify for Medicaid?

SENATOR BARNES: Thank you for that question. I will now read the blurb and see if that handles it. I move HB 798 ought to pass as amended. Powers of Attorney is a document that gives another person, the agent, the legal authority to act on behalf of the principal. Powers of Attorney who are authorized in 1977 and have been popular because they are inexpensive and easy to use and do not involve court approval or oversight. They are commonly used as an alternative to guardianship to manage the affairs of incompetent individuals. Because there is no court approval or oversight, this relationship is often exploited. Often agents will give gifts to themselves out of the funds for which they have a fiduciary duty. This is an obvious conflict of interest and is often a source of exploitation. This legislation will require mandatory notices to be signed by the agent and principal that would clearly inform both parties of the effect and responsibilities of the agent. It would also require agents under powers of attorney, who wish to give gifts greater than \$40,000 or 25 percent of the total value of the estate, to receive court approval. This legislation will help protect the most vulnerable people in society. The Banks Committee asks for your support for the motion of ought to pass as amended. I hope that answered your question Senator Boyce.

SENATOR BOYCE: My question is on page one of the bill, line six and seven. It talks about whether the gift is intended to reduce the words "assets or income" in order to qualify him or her for Medicaid or from governmental benefits. My question is, I don't know what the rest of the RSA that that is being put into, says. Does that say that they are allowed to make these gifts if that is the reason or is it that they are not allowed to make these gifts if that is the reason?

SENATOR BARNES: Senator Boyce, I don't have the answer, but I have a hunch that the chairman of that fantastic Banking Committee might be able to answer that question.

SENATOR FLANDERS: Thank you. That was not brought up. I was just reading the...

SENATOR BARNES: Trust me, it is a good bill.

SENATOR FLANDERS: What is your question again, quickly?

SENATOR BOYCE: Okay, on page one of the bill, line six and seven, it talks about...it simply says "whether the gift is intended to reduce the words "assets or income" in order to qualify him or her for Medicaid or other governmental benefits." What I don't know is, what that is plugged into. Is that saying that these gifts cannot be approved if the intent is to put somebody into Medicaid or does it say that the gifts can be approved if the intent is to put them into Medicaid? In other words, if somebody has assets that would keep them from going into Medicaid, and this guardian gives away their estate in order to make them a ward of the state and cost to the taxpayers.

SENATOR FLANDERS: This does not allow that to happen. That is the purpose of this bill. So that can't happen. Now that it has caught my attention. This is so that somebody cannot appoint a guardian, take the money and put it somewhere and say okay, now I am ready for Medicaid. This bill prevents that.

SENATOR BOYCE: Okay. I just wanted to be clear. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 807-FN**, increasing the filing fees for a fund raising counsel and a paid solicitor of a charitable trust. Banks Committee. Ought to pass, Vote 2-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you Mr. President. I move HB 807 ought to pass. This legislation increases filing fees for a fund-raising counsel and paid solicitors of charitable trusts. The Banking Committee voted 2-0 unanimously on this and we appreciate your support. Thank you.

SENATOR D'ALLESANDRO: Thank you Mr. President. Recently there has been some real concern manifested by people throughout this state about paid solicitors calling. Now this requires people to sign up for a fee, and they file with the attorney general. I guess my question to Senator Barnes is when they sign up, do they go on a list at the Attorney General's office that is public and if a person were solicited and wanted to find out if that solicitation was valid, could they call the Attorney General's office and find out if it is a valid solicitor that is registered with the state and has the authority to do this solicitation?

SENATOR BARNES: I don't remember that, but my gut tells me that yes, it would be at the Attorney General's office and open for the public to look at. I don't remember that in the discussion on the bill, Senator.

SENATOR D'ALLESANDRO: Thank you Senator Barnes.

**Adopted.**

**Ordered to third reading.**

**HB 816**, making technical corrections to the securities laws. Banks Committee. Ought to pass, Vote 2-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President. As you note the vote on these are 2 to 0, I am wondering if you were able to figure out the two that were there at Banks that day? Thank you Mr. President. I move

HB 816 ought to pass. This bill was requested by the Department of State and makes various changes to the securities laws. These changes will tighten procedures and allow for more enforcement. Corporations and partnerships will no longer have to submit two financial statements, one to the Secretary of State and the other to the SEC (Securities and Exchange Commission). This will now allow them to have to submit one statement to the SEC in order to eliminate duplication. Currently the Secretary of State is able to issue orders such as subpoenas, and so forth and the Secretary of State or his designee will now be able to enforce the same orders issued. This will allow for a more efficient method of enforcement. The Banks Committee asks for your support for the motion of ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

Senator Sapareto Rule #42 on HB 816.

**HB 817**, relative to the regulation of first and second mortgage brokers and mortgage servicers. Banks Committee. Ought to pass, Vote 2-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President and members of the Senate. This is a housekeeping bill that was presented to us by the Banking Commission. This bill makes several changes to the laws governing first and second mortgages. The legislation is intended to make the licensing process more thorough licensees' examinations. Some of the changes include: electronic filings, automatic renewals of licenses if the company is in compliance and holds a valid license, and mortgage brokers and bankers can file financial statements within 90 days of the fiscal year instead of at renewal time. These changes are all designed to make first and second mortgage bankers and brokers statutes more efficient. Please support the committee on Banks. Thank you.

Senator Flanders offered a floor amendment.

Sen. Flanders, Dist. 7

**May 21, 2003**  
**2003-1736s**  
**06/09**

### **Floor Amendment to HB 817**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to the regulation of first and second mortgage brokers and mortgage servicers and to the regulation of small loans, title loans, and payday loans.

Amend the bill by replacing all after section 40 with the following:

41 Regulation of Small Loans, Title Loans, and Payday Loans. RSA 399-A is repealed and reenacted to read as follows:

#### **CHAPTER 399-A**

##### **REGULATION OF SMALL LOANS, TITLE LOANS, AND PAYDAY LOANS**

**399-A:1 Definitions.** In this chapter:

I. "Check" means a draft drawn on the account of an individual or individuals at a depository institution.

II. "Closed-end loan" means a loan other than an open-end loan.

III. "Commissioner" means the bank commissioner.

IV. "Engaged in the business of making title loans" means that at least 10 percent of all loans made by the lender are title loans.

V. "Financial institution" means a bank, savings institution, credit union, or trust company.

VI. "License" means the authority to do business issued by the commissioner under the provisions of this chapter.

VII. "Licensee" means a person to whom one or more licenses have been issued under this chapter.

VIII. "Lender" means individuals, corporations, associations, firms, partnerships, limited liability companies, and joint stock companies or other forms of organizations that lend money or give credit temporarily on condition that the amount borrowed be returned, usually with an interest fee. "Lender" shall not include a financial institution.

IX. "Open-end loan" means an open-end credit arrangement pursuant to which a creditor may permit a borrower from time to time to obtain loans from the creditor pursuant to RSA 358-K:1, XI.

X. "Payday loan" means a small, short-maturity loan on the security of:

(a) A check;

(b) Any form of assignment of an interest in the account of an individual or individuals at a depository institution; or

(c) Any form of assignment of income payable to an individual or individuals.

XI. "Payday loan lender" means a person engaged in the business of making payday loans.

XII. "Person" means any individual, firm, voluntary association, joint-stock company, incorporated society, partnership, association, trust, corporation, limited liability company or legal or commercial entity or group of individuals however organized.

XIII. "Principal" means any person who, directly or indirectly, owns or controls:

(a) Ten percent or more of the outstanding stock of a stock corporation; or

(b) Ten percent or greater interest in a nonstock corporation or a limited liability company.

XIV. "Small loan" means a closed-end loan in the amount of \$10,000 or less or an open-end loan with a line of credit of \$10,000 or less, and where the lender contracts for, exacts or receives, directly or indirectly, in connection with any such loan any charges, whether for interest, compensation, brokerage, endorsement fees, consideration, expense or otherwise, which in the aggregate are greater than 10 percent per annum.

XV. "Small loan lender" means any person engaged in the business of making small loans.

XVI. "Title loan" means a loan, other than a purchase money loan:

(a)(1) Secured by the title to a motor vehicle;

(2) Made for a period of 60 days or less;

(3) With a single payment payback; and

(4) Made by a lender in the business of making title loans; or

(b) That is secured, substantially equivalent to a title loan, and designated as a title loan by rule or order of the commissioner.

XVII. "Title loan lender" means a person engaged in the business of making title loans.

#### 399-A:2 License Required.

I. No person shall engage in the business of making small loans, title loans or payday loans, without first obtaining a license from the commissioner as provided in this chapter.



II. Each such license shall terminate on December 31st. Each license shall remain in full force and effect until surrendered, revoked, suspended, or terminated.

III. This chapter shall not apply to any person lawfully engaged in business as permitted by the laws of this state or of the United States relative to banks, trust companies, insurance companies, savings or building and loan associations, credit unions or to loans made by them, nor shall this chapter apply to any person engaged solely in the business of making loans for educational purposes or to the loans made by such persons, nor shall it apply to any person engaged in the business of second mortgage loans in accordance with the provisions of RSA 398-A, as amended, or to loans made by such persons.

IV. Any person not exempt under paragraph III, and the several members, officers, directors, agents and employees thereof, who shall willfully violate or participate in the violation of any provisions of paragraph I shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. If in the making or collection of a loan the licensee violates paragraph I of this section, the loan contract shall be void and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever.

#### 399-A:3 Application and Fees.

I. Every applicant for licensing under this chapter shall file with the commissioner a written application, under oath and penalty of perjury, and in the form prescribed by the commissioner. The application shall contain the name of the applicant; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees and principal officers; names of any branch managers, the trade name, if any, under which the applicant proposes to conduct such business; the articles of incorporation or organization or partnership agreement; the name and address of the New Hampshire resident agent if the applicant is a foreign entity; and such other pertinent information as the commissioner may require. Each initial and renewal license application shall be accompanied by a nonrefundable application fee of \$450 for the principal place of business of the licensee within this state and the sum of \$450 for each branch of such licensee maintained in this state.

II. Every applicant for licensing shall be required to submit to the banking department detailed financial information sufficient for the commissioner to determine the applicant's ability to conduct the business of a small loan lender, payday lender, or title loan lender with financial integrity. The application shall include a balance sheet or a statement of net worth prepared in accordance with generally accepted accounting principles. Net worth statements provided in connection with a license application under this section shall be subject to review and verification during the course of any examination or investigation conducted under this chapter. Each applicant shall demonstrate that it has available for use in such business at each location specified in the application, at least \$25,000, or in the case of a licensee, has such amount available or actually invested in loans made under this chapter at each location.

III. Every applicant for licensing under this chapter shall file with the commissioner, in such form as the commissioner prescribes by rule, irrevocable consent appointing the commissioner to receive service of any lawful process in any non-criminal suit, action or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order under this chapter after

the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order under this chapter, and such person has not filed a consent to service of process under this section and personal jurisdiction over such person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to such person's appointment of the commissioner to receive service of any lawful process. Service may be made by leaving a copy of the process in the office of the commissioner along with \$5, but is not effective unless:

(a) The plaintiff, who may be the attorney general in a suit, action or proceeding instituted by him or her, forthwith sends a notice of the service and a copy of the process by registered mail to the defendant or respondent at such person's last address on file with the commissioner, and

(b) The plaintiff's affidavit of compliance with this paragraph is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

#### 399-A:4 Investigation of Application; License Requirements.

I. Upon the filing of the complete application for a small loan lender license, a payday loan lender license or a title loan lender license and payment of the required application fee, if the commissioner determines that the applicant's financial resources and responsibility, experience, character and general fitness, personnel, and record of past or proposed conduct warrant the public's confidence and that the business will be operated lawfully, honestly, and fairly within the purposes of this chapter, the commissioner shall enter an order approving such application and shall issue a license to the applicant and shall issue licenses to the applicant's branches to engage in the business of a small loan lender, payday loan lender, or title loan lender under and in accordance with the provisions of this chapter.

II. If a person holds a valid license under this section and is in compliance with this chapter and the rules adopted pursuant to this chapter, such licensee may renew the license by paying the required annual fee of \$450 for the principal license and \$450 for each branch office to the banking department on or before December 1st for the ensuing year that begins on January 1st. Failure to renew the license shall result in the license terminating on December 31st.

III. Each license shall specify the name and address of the licensee, the location of the office or branch, and shall be conspicuously displayed there in a public area of the location. In case such location is changed, the commissioner shall endorse the change of location on the license without charge.

IV. No licensee shall transact any business provided for by this chapter under a trade name or any other name different from the name stated in its license or branch office license without immediately notifying the commissioner, who shall then amend the license accordingly. Before the corporate, organization, or trade name under which the licensed business is conducted is changed, the lender shall give notice to the commissioner who shall amend the license accordingly without cost. The name or trade name of the licensee shall not be confusing to the public or conflict with any existing licensed lender's name.

V. No license shall be issued to any person whose principal place of business is located outside of this state unless that person designates an

agent residing within this state for service of process. Licensees shall be required to post their license at the agent's New Hampshire business location.

VI. Persons licensed under this chapter are under a continuing obligation to update information on file with the commissioner. If any information filed with the commissioner becomes materially inaccurate, the licensee shall promptly submit to the commissioner an amendment to its application records that will correct the information on file with the commissioner. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

VII. A licensee who ceases to engage in the business of a small loan lender, payday loan lender, or title loan lender at any time during a license year for any cause, including but not limited to bankruptcy, license revocation, or voluntary dissolution, shall surrender such license in person or by registered or certified mail to the commissioner within 15 calendar days of such cessation.

VIII. Any licensee may surrender any license by delivering it to the commissioner with written notice of a surrender, but such surrender shall not affect administrative, civil, or criminal liability for acts committed prior thereto.

399-A:5 Consumer Credit Administration License Fund. The bank commissioner shall keep a separate account, in the state treasurer's office, to be known as the consumer credit administration license fund. Moneys received from payment of fees under this chapter shall be credited to the consumer credit administration license fund. This fund may be expended by the commissioner with the approval of the governor and council for the purpose of supervising persons subject to supervision and licensing by the consumer credit administration division of the banking department.

399-A:6 Reporting and Recordkeeping Requirements.

I.(a) Each licensee shall file, under oath, an annual report with the commissioner on or before February 1st each year concerning its business and operations for the preceding calendar year or license period ending December 31st in the form prescribed by the commissioner. A separate annual report shall be filed for each type of license held by the licensee.

(b) Each licensee shall also file, under oath, its financial statement with the commissioner within 60 days from the date of its fiscal year end. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall include a balance sheet, income statement, statement of changes in owners' equity, a cash flow statement and note disclosures. If the financial statement is not audited, a certification statement shall be attached and signed by a duly authorized officer of the sales licensee. The certification statement shall state that the financial statement is true and accurate to the best of the officer's belief and knowledge.

II. The commissioner shall publish an analysis of the information required in the licensee's annual report as part of the commissioner's annual report.

III. Any licensee failing to file either the annual report or the financial statement required by this section within the time prescribed shall pay to the commissioner a penalty of \$25 for each calendar day the annual report or financial statement is overdue.

IV. In addition to the annual report and financial statement required by this section, the commissioner may require such regular or special reports as the commissioner deems necessary to the proper supervision of licensees under this chapter.

V. A licensee who files an annual report under this section which fails to disclose or materially misstates loan contracts made during the reporting year may, in addition to any other penalty provided by law and after notice and opportunity for hearing pursuant to RSA 541-A, be subject to a fine of not more than \$1,000 and to license revocation or suspension.

VI. Each licensee shall keep and use such books and accounting records as are in accord with sound and accepted accounting practices and enable the commissioner to determine whether the licensee is complying with this chapter.

399-A:7 Denial, Suspension or Revocation of Licenses.

I. The commissioner may by order deny, suspend or revoke any license or application if the commissioner finds that the order is in the public interest and the applicant or licensee, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant or licensee:

(a) Has filed an application for licensing which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) Has made a false or misleading statement to the commissioner or in any reports to the commissioner;

(c) Has made fraudulent misrepresentations, has circumvented or concealed, through whatever subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to a borrower under the provisions of this chapter;

(d) Has failed to supervise its agents, managers or employees;

(e) Is the subject of an order entered within the past 5 years by this state, any other state or federal regulator denying, suspending or revoking licenses or registration;

(f) Is permanently, preliminarily, or temporarily enjoined by any court of competent jurisdiction from in engaging in or continuing any conduct or practice involving any aspect of lending or collection activities;

(g) Is not qualified on the basis of such factors as experience, knowledge, and financial integrity;

(h) Has engaged in dishonest or unethical practices in the conduct of the business of making or collecting small loans, payday loans, or title loans;

(i) Has violated this chapter or any rule or order thereunder or has violated applicable federal laws or rules thereunder; or

(j) For other good cause shown.

II. The commissioner may issue an order requiring the person to whom any license has been granted to show cause why the license should not be suspended or revoked. The order shall be calculated to give reasonable notice of the opportunity for hearing, and shall state the reasons for the issuance of the order.

III. If a licensee is a partnership, association, corporation, or entity however organized, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed association or corporation or any member of a licensed partnership has so acted or failed to act on behalf of said licensee as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for supervision of its branch offices and for the acts

of any or all of his or her employees while acting as his or her agent if such licensee, after actual knowledge of such acts, retained the benefits, proceeds, profits or advantages accruing from such acts or otherwise ratified such acts.

IV. Any license revocation, suspension, or unfavorable action by the department on a license shall comply with the provisions of RSA 541-A. An aggrieved licensee may, pursuant to RSA 541-A and RSA 541, appeal an unfavorable action by the department. The department may take action for immediate suspension of a license, pursuant to RSA 541-A.

V. If the commissioner finds that any licensee or applicant for license is no longer in existence or has ceased to do business as a small loan lender, payday loan lender, or title loan lender, or cannot be located after reasonable search, the commissioner may by order revoke the license or deny the application. The commissioner may deem abandoned and withdraw any application for licensure made pursuant to this chapter, if any applicant fails to respond in writing within 180 days to a written request from the commissioner requesting a response. Such request shall be sent via certified mail to the last known address of the applicant that is on file with the commissioner.

VI. No revocation, suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any obligors, and such contracts and all lawful charges thereon may be collected by the licensee, its successors and assigns.

399-A:8 Cease and Desist Orders. The banking department may issue a cease and desist order against any licensee or person who it has reasonable cause to believe has violated or is about to violate the provisions of this chapter or any rule or order under this chapter. Delivery of such order shall be by hand or registered mail at the principal office of the licensee or other person. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. A hearing shall be held not later than 10 days after the request for such hearing is received by the commissioner after which and within 20 days of the date of the hearing the commissioner shall issue a further order vacating the cease and desist order or making it permanent as the facts require. All hearings shall comply with 541-A. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him or her upon consideration of the cease and desist order, the allegations of which may be deemed to be true. If the person to whom a cease and desist order is issued fails to request a hearing within 30 calendar days of receipt of such order, then such person shall likewise be deemed in default, and the order shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown.

399-A:9 Consumer Inquiries.

I. Consumer complaints naming licensees under this chapter, which are filed in writing with the office of the bank commissioner, shall be forwarded via certified or registered mail to the licensee for response within 10 days of receipt by the department. Licensees shall, within 30 days after receipt of such complaint, send a written acknowledgement thereof to the consumer and the banking department. Not later than 60 days following receipt of such complaint, the licensee shall conduct an investigation of the complaint and either:

(a) Make appropriate corrections in the account of the consumer and transmit to the consumer and the banking department written notification of such corrections, including documentary evidence thereof; or

(b) Transmit a written explanation or clarification to the consumer and the banking department which sets forth, to the extent applicable, the reasons why the licensee believes its actions are correct, including copies of documentary evidence thereof.

II. A licensee who fails to respond to consumer complaints as required by this section within the time prescribed shall pay to the commissioner the sum of \$50 for each day such response is overdue. For purposes of this section, the date of transmission shall be the date such response is received by the commissioner.

III.(a) Licensees who because of extenuating circumstances beyond the control of the licensee, are unable to comply with the time frames prescribed in this section, may make written request to the commissioner for a waiver of such time frames. Waivers shall not be granted or considered unless the request for the waiver:

(1) Is received by the banking department within 50 days following the licensee's receipt of the complaint;

(2) Specifies the reason for the request; and

(3) Specifies a date certain by which the licensee shall comply with the provisions of this section.

(b) Requests for waivers shall be either granted or denied within 5 days of receipt by the banking department.

#### 399-A:10 Examinations and Investigations.

I. The commissioner or the commissioner's duly authorized representative may at any time, and shall periodically, with or without notice to the licensee or person, examine the business affairs of any licensee or any other person subject to this chapter, whether licensed or not, as the commissioner deems necessary to determine compliance with this chapter and the rules adopted pursuant to it. In determining compliance, the commissioner or the duly authorized representative may examine the books, accounts, records, files, and other documents, whether electronically stored or otherwise, and any other matters of any licensee or person. The commissioner or the duly authorized representative shall have and be given free access to the office and places of business, files, safes, and vaults of all such persons, and shall have authority to require the attendance of any person and to examine him or her under oath relative to such loans or such business or to the subject matter of any examination or investigation and shall have authority to require the production of books, accounts, papers, and records of such persons.

II. Every person being examined, and all of the officers, directors, employees, agents, and representatives of such person shall make freely available to the commissioner or the commissioner's examiners the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination and shall facilitate the examination. The expense of such examination shall be chargeable to and paid by the licensee or person being examined. The procedure for such payment shall be the same as for payments by institutions for cost of examinations under RSA 383:11.

III. Those licensees or persons that maintain their files and business documents in another state shall appoint a New Hampshire agent and shall return such files and documents to their principal New Hampshire office or the office of their New Hampshire agent for examination no later than 21 calendar days after being requested to do so by the bank-

ing department. Failure to provide files and documents within the time established by this paragraph shall subject a licensee or person to a fine of \$50 per day for each day after 21 days the files and documents are not produced. Failure to provide files and documents within 60 days after being requested to do so by the banking department shall be sufficient cause for license revocation, suspension, or denial or other penalties under this chapter.

IV. The commissioner or the commissioner's duly authorized representative may investigate at any time any person that the commissioner reasonably believes is engaged in the business of making small loans, payday loans, or title loans, or participating in such business as principal, agent, broker, or otherwise; or any person who the commissioner has reasonable cause to believe is violating or is about to violate any provision of this chapter, or any rule or order under this chapter, whether such person shall claim to be within the authority or beyond the scope of this chapter. Any person not exempt hereunder who shall advertise for, solicit or hold himself or herself out as willing to make or procure small loans, payday loans, or title loans shall be presumed to be engaged in the business of making such loans.

V. In any investigation to determine whether any person has violated or is about to violate this chapter or any rule or order under this chapter, upon the commissioner's finding that the person violated this chapter or a rule or order under this chapter, or the person charged with the violation being found in default, the commissioner shall be entitled to recover the cost of the investigation, in addition to any other penalty provided for under this chapter.

VI. If the commissioner or examiner finds any accounts or records to be inadequate, or kept or posted in a manner not in accordance with generally accepted accounting principles, the commissioner may employ experts to reconstruct, rewrite, post or balance them at the expense of the person being examined if such person has failed to maintain, complete or correct such records or accounting after the commissioner or examiner has given him or her written notice and a reasonable opportunity to do so.

VII. Any individual who refuses without just cause to be examined under oath or who willfully obstructs or interferes with the examiners in the exercise of their authority pursuant to this section shall be guilty of a misdemeanor.

VIII.(a) Upon receipt of a written report of examination, the licensee shall have 30 days or such additional reasonable period as the commissioner for good cause may allow, within which to review the report, recommend any changes and set forth in writing the remedial course of action the licensee will pursue to correct any reported deficiencies outlined in the report.

(b) If so requested by the person examined, within the period allowed in subparagraph (a), or if deemed advisable by the commissioner without such request, the commissioner shall hold a closed hearing relative to the report and shall not file the report in the department until after such closed hearing and issuance of his or her order thereon. If no such closed hearing has been requested or held, the examination report, with such modifications, if any, thereto as the commissioner deems proper, shall be accepted by the commissioner and filed upon expiration of the review period provided for in subparagraph (a). The report shall in any event be so accepted and filed within 6 months after final hearing thereon.

(c) All reports pursuant to this section shall be absolutely privileged and although filed in the department as provided in subparagraph (b) shall nevertheless not be for public inspection. The comments and recommendations of the examiner shall also be deemed confidential information and shall not be available for public inspection.

399-A:11 Provisions Applicable to all Persons under this Chapter.

I. Any loan made outside this state, as permitted by the laws of the state in which the loan was made, may be collected in this state in accordance with its terms.

II. No person making small loans, payday loans, or title loans, shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever, any statement or representation with regard to the rates, terms, or conditions which is false, misleading or deceptive.

III. This chapter, or any part thereof may be modified, amended, or repealed so as to effect a cancellation or alteration of any license, or right of a licensee hereunder, provided that such modification, amendment or repeal shall not impair or affect the obligation of any pre-existing lawful contracts between any licensee and any borrowers.

IV. No interest shall be paid, deducted, or received in advance. Interest shall not be compounded and interest shall be computed only on unpaid principal balances. For the purpose of computing interest, whether at the maximum rate or less, a month shall be considered a calendar month and, where a fraction of a month is involved, a day shall be considered  $\frac{1}{30}$  of a month. However, if all or any part of the consideration for a loan contract is the unpaid principal balance of the prior loan with the same licensee then the loan contract may include unpaid interest of such prior loan which has accrued within 60 days of the making of the loan contract.

V. If charges in excess of those permitted by this chapter shall be charged, contracted for or received except as a result of an accidental or bona fide error the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, charges or recompense whatsoever.

VI. No person shall take any confession of judgment or any power of attorney running to himself, herself, or any third person to confess judgment or to appear for the borrower in a judicial proceeding; nor take any note, agreement, or promise to pay which does not disclose the date and amount or maximum credit line of the note or agreement, a schedule or description of the payments to be made thereon, and the agreed charges or rates of charge; nor take any instrument in which blanks are left to be filled in after the loan is made.

VII. No person shall include any of the following provisions in a small loan, payday loan, or title loan contract:

(a) A hold-harmless clause;

(b) A confession of judgment or other waiver of the right to notice and the opportunity to be heard in an action;

(c) An agreement by the consumer not to assert any claim or defense arising out of the contract against the lender or any holder in due course;

(d) An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held by, owned by or due to the consumer, unless the waiver or limitation applies only to property subject to security interest executed in connection with the loan; or



(e) A clause permitting the continuation of interest after repossession of the consumer's motor vehicle.

VIII. No person shall be permitted to accept as collateral on a loan under this chapter:

(a) Real estate; or

(b) Household furniture presently in use on loans of \$2,000 or less.

IX. Any agreement purporting to convey to a licensee a security interest in the property listed in paragraph VII shall be null and void.

X. If a borrower desires to renew an existing closed-end loan, payday loan, or title loan for the purpose of obtaining additional cash a new contract shall be drawn up in its entirety and such prior loan shall be paid in full from such proceeds of the new loan. All legal papers in connection with such prior loan shall be stamped "PAID IN FULL" and returned to such borrower.

XI. No charge for any examination, service, brokerage, commission, or other fee shall be directly or indirectly made or contracted for on closed-end loans, payday loans, or title loans except the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer, for filing or recording in any public office any instrument securing such loan, which fees may be collected when such loan is made, or at any time thereafter and except the reasonable costs, charges, and expenses, including court costs actually incurred in connection with a repossession of the security or an actual sale of the security in foreclosure proceedings or upon entry of judgment.

XII. Credit life insurance, credit accident and health insurance, and credit involuntary unemployment insurance may be issued in connection with a loan or other credit transaction authorized by this chapter in compliance with the provisions of RSA 408:15, II and the cost of such insurance and any commission, benefit or return to the licensee therefrom shall not be deemed a violation of any provision of this chapter; provided, however, that if there is more than one borrower or obligor on any such loan or credit transaction, credit life insurance providing a single benefit may cover both borrowers or obligors.

XIII. The licensee may require a borrower to insure tangible personal property given to secure the loan against any substantial risk of loss, damage, or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is less, and for the customary insurance term approximating the term of the loan. The borrower shall not be required to insure against unusual or exceptional risks not ordinarily insured against in policies issued to nonborrowers. The premium for such insurance may be included in the principal amount of the loan. Such insurance shall be written by or through a duly licensed insurance agent or broker with a company qualified to do business in New Hampshire. Such insurance shall name the borrower as insured but may include the licensee as co-insured or protect the interest of the licensee under a loss-payable clause. No licensee shall require a borrower to duplicate or cancel existing insurance or to purchase insurance from a licensee or any employee, affiliate, or associate of the licensee or from any agent, broker, or insurance company designated by the licensee, as a condition precedent to the making of the loan.

XIV. A lender in the business of making small loans, payday loans, or title loans shall include in every loan contract a notice, printed in type size equal to at least 12-point type, stating that the consumer or the consumer's attorney may file a complaint with the commissioner.

399-A:12 Provisions Applicable to Loans.

I. For any closed-end loan of \$10,000 or less, excluding charges, a licensee may lend in money, goods or things of value upon such security not forbidden by RSA 399-A:12,VIII as may be agreed upon and may charge, contract for and receive charges on the entire principal of the loan, at rates agreed to in writing by the borrower and licensee.

II. For any open-end loan with a line of credit of \$10,000 or less, excluding charges, a licensee may charge, contract for and receive charges on the unpaid balances of the account at rates agreed to in writing by the borrower and the licensee.

III. No small loan lender shall permit any person to be obligated to him or her on one or more contracts of loan the total principal balance of which is more than \$10,000.

IV. For the purpose of applying paragraphs II and III of this section only, small loan lender licensee shall mean any single small loan lender, except that in the event any person or affiliated group of persons holds more than one small loan lender license, such person or affiliated group of persons shall be considered a single small loan lender licensee.

V. No small loan lender shall induce any potential borrower who is not a loan customer of the licensee to enter into a closed-end loan agreement, by delivering in the first instance a negotiable check for such loan to such potential borrower, without including the following information clearly printed on the endorsement side of the check:

(a) A statement which reads, "By endorsing this check, you become legally liable for repaying all moneys, including interest, as specified in the following loan agreement/disclosure statement;"

(b) The amount financed;

(c) The annual percentage rate;

(d) The number of installments; and

(e) The amount of each installment payment.

VI. Every small loan lender shall:

(a) Mail or deliver to the borrower, or if more than one, to one of them, at the time of making a loan under this chapter, a payment book in which space shall be provided for the record of all payments showing principal, interest and balance and which shall contain statements showing the date of such loan; the amount of the principal of such loan; the total interest charged for the period of such loan; the nature of the security, if any, for such loan; the name and address of the borrower and of the licensee; and the description of schedule of payments on such loans. The payment book shall also have printed therein the following:

"Interpretation of Interest Charges in  
the Event Payments are Made when Due.

2% per month = 24% per year or \$13.47 per year on \$100

1 1/2% per month = 18% per year or \$10.01 per year on \$100"

Provided, however, a licensee may provide a borrower with a monthly billing statement in lieu of a payment book and the information required above, if the licensee has previously made a disclosure in accordance with the Federal Truth-in-Lending Act;

(b) Give to the person making any cash payment on account of any closed-end loan a receipt at the time such payment is made;

(c) Permit payment in advance in an amount equal to one or more full installments at any time during the regular business hours of the licensee;

(d) Upon repayment of a closed-end loan in full, mark plainly every note or other evidence of the indebtedness or assignment signed by an obligor or a copy of any of the foregoing documents with the words "PAID IN FULL" or "CANCELLED" and release or provide the borrower

evidence to release any mortgage or security instrument no longer securing any indebtedness to the licensee. If the original is retained by the lender, the original shall be returned within a reasonable period of time upon the written request of the borrower;

(e) Upon repayment of an open-end loan in full, written notice from the borrower to the licensee of termination of such loan and surrender to the licensee of any checks or other device used to obtain credit; mark plainly every note, agreement or assignment signed by an obligor, with the words "PAID IN FULL" or "CANCELLED" and release or provide the borrower evidence to release any mortgage or security instrument no longer securing any indebtedness to the licensee.

VII. No lender shall conduct the business of making loans under this chapter at any office, suite, room, or place of business where liquor or lottery tickets are sold.

399-A:13 Provisions Applicable to Payday Loan Lenders.

I. Each licensee shall conspicuously post in its licensed location a schedule of fees and interest charges, with examples using a \$300 loan payable in 14 days and 30 days.

II. Each payday loan shall be evidenced by a written loan agreement, which shall be signed by the borrower and a person authorized by the licensee to sign such agreements and dated the same day the loan is made and disbursed. The loan agreement shall set forth, at a minimum:

(a) The principal amount of the loan;

(b) The fee charged;

(c) The annual percentage rate, which shall be stated using that term, applicable to the transaction calculated in accordance with Federal Reserve Board Regulation Z;

(d) Evidence of receipt from the borrower of a check, dated the same date, as security for the loan, stating the amount of the check;

(e) An agreement by the licensee not to present the check for payment or deposit until a specified maturity date, which date shall be at least 7 days after the date the loan is made and after which date interest shall not accrue at a greater rate than 6 percent per year;

(f) An agreement by the licensee that the borrower shall have the right to cancel the loan transaction at any time before the close of business of the next business day following the date of the transaction by paying to the licensee, in the form of cash or other funds instrument, the amount advanced to the borrower; and

(g) An agreement that the borrower shall have the right to prepay the loan prior to maturity by paying the licensee the principal amount advanced and any accrued and unpaid fees.

III. The lender shall give a duplicate original of the loan agreement to the borrower at the time of the transaction.

IV. A lender shall not obtain any agreement from the borrower:

(a) Giving the lender or any third person power of attorney or authority to confess judgment for the borrower;

(b) Authorizing the lender or any third party to bring suit against the borrower in a court outside the state; or

(c) Waiving any right the borrower has under this chapter.

V. A lender shall not require, or accept, more than one check from the borrower as security for any loan at any one time.

VI. A licensee shall not cause any person to be obligated to the licensee in any capacity at any time in the principal amount of more than \$500.

VII. A lender shall not refinance, renew, or extend any loan.

VIII. A lender shall not cause a borrower to be obligated upon more than one loan at any time for the purpose of increasing charges payable by the borrower.

IX. A lender shall not require or accept a post-dated check as security for, or in payment of, a loan.

X. A lender shall not threaten, or cause to be instigated, criminal proceedings against a borrower if a check given as security for a loan is dishonored.

XI. A lender shall not take an interest in any property other than a check payable to the licensee as security for a loan.

XII. A lender shall not make a loan to a borrower to enable the borrower to pay for any other product or service sold at the licensee's business location.

XIII. Loan proceeds shall be disbursed in cash or by the lender's business check. No fee shall be charged by the lender or an affiliated check cashier for cashing a loan proceeds check.

XIV. A check given as security for a loan shall not be negotiated to a third party.

XV. Upon receipt of a check given as security for a loan, the lender shall stamp the check with an endorsement stating "This check is being negotiated as part of a payday loan pursuant to RSA 399-A, and any holder of this check takes it subject to all claims and defenses of the maker."

XVI. Before entering into a payday loan, the lender shall provide each borrower with a pamphlet, in form consistent with regulations promulgated by the commissioner, explaining in plain language the rights and responsibilities of the borrower and providing a toll-free number in the banking department for assistance with complaints.

XVII. Before disbursing funds pursuant to a payday loan, a lender shall provide a clear and conspicuous printed notice to the borrower indicating that a payday loan is not intended to meet long-term financial needs and that the borrower should use a payday loan only to meet short-term cash needs.

XVIII. A borrower shall be permitted to make partial payments, in increments of not less than \$50 on the loan at any time prior to maturity without charge. The licensee shall give the borrower signed, dated receipts for each payment made, which shall state the balance due on the loan.

399-A:14 Provisions Applicable to Title Loan Lenders. A title loan lender shall not:

I. Charge the consumer more than one fee for dishonored checks when the consumer issues more than one check to the lender. However, the title loan lender may recover from the consumer any fee charged to the lender by an unaffiliated financial institution for each dishonored check;

II. Make more than one outstanding loan that is secured by one title;

III. Make a title loan without providing the borrower within the title loan agreement the right to cancel the title loan at any time before the close of business of the next business day following the date of the transaction by repaying to the licensee in cash the amount advanced to the borrower.

IV. Offer, advertise, or make a loan with a rate of interest that is lower in the original period than in subsequent renewals.

399-A:15 Title Loan Renewals. A title loan shall be for an original term of no more than 60 days. A title loan lender may allow such loan to be renewed no more than 9 additional periods each equal the original term,

provided however, that at each such renewal the borrower must pay at least 5 percent of the loan's original principal balance, in addition to any finance charge owed, to reduce the principal balance outstanding. If the borrower cannot pay this principal reduction at any renewal, the title loan lender may either: (i) declare the borrower in default, or (ii) allow the loan to be renewed, provided that the lender shall reduce the current principal amount of the loan by 5 percent of the original principal amount for the purposes of calculating interest thereafter. This reduction in principal shall continue to be owed by the borrower, but such amount shall not be entitled to accrue interest thereafter. For the purpose of this section, a renewal is any extension of a title loan for an additional period without any change in the terms of the title loan other than a reduction in principal. No accrued interest shall be capitalized or added to the principal of the loan at the time of any renewal.

399-A:16 Powers of the Commissioner.

I. The commissioner shall have the power to subpoena witnesses and administer oaths in any adjudicative proceeding and to compel, by subpoena duces tecum, the production of documents, papers, books, records, files and other evidence, whether electronically stored or otherwise, before the commissioner in any matter over which the commissioner has jurisdiction, control or supervision pertaining to the provisions of this chapter. The commissioner shall have the power to administer oaths and affirmation to any person whose testimony is required. If any person shall refuse to obey any such subpoena or to give testimony or to produce evidence as required thereby, any justice of the superior court may, upon application and proof of such refusal, order the issuance of a subpoena, or subpoena duces tecum, out of the superior court, for the witness to appear before the superior court to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the superior court, the clerk shall issue such subpoena, as directed, requiring the person to whom it is directed to appear at the time and place therein designated. If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the commissioner may apply to any justice of the superior court who, after proof of such refusal, shall issue such citation, directed to any sheriff, for the arrest of such person, and, upon such person's being brought before such justice, proceed to a hearing of the case. The court shall have power to enforce obedience to such subpoena, and the answering of any question and the production of any evidence that may be proper, by a fine not exceeding \$10,000 or by imprisonment, or by both.

II. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the administration and enforcement of this chapter.

III. The commissioner may prepare, alter, or withdraw such forms as are necessary to comply with the provisions of this title.

IV. The commissioner may issue, amend, or rescind such orders as are reasonably necessary to carry out the provisions of this chapter.

V. The commissioner may, for good cause shown, abate all or a portion of delinquency penalties assessed under this chapter.

VI. All actions taken by the commissioner pursuant to this chapter shall be taken only when the commissioner finds such action necessary or appropriate to the public interest or for the protection of consumers and consistent with the purposes fairly intended by the policy and provisions of this title.

**399-A:17 Records and Filings.**

I. A document is filed when it is received by the commissioner. If any filing deadline date falls on a weekend or on a New Hampshire state or federal legal holiday, the due date shall be automatically extended to the next business day following such weekend or holiday.

II. Electronic filings, when received by the commissioner, are deemed filed, and are prima facie evidence that a filing has been duly authorized and made by the signatory on the application or document, are admissible in any civil or administrative proceeding under this chapter, and are admissible in evidence in accordance with the rules of superior court in any action brought by the attorney general under this chapter.

III. A licensee may maintain its records in electronic format if, upon request, the licensee provides the commissioner with:

(a) A full explanation of the programming of any data storage or communications systems in use; and

(b) Information from any books, records, electronic data processing systems, computers, or any other information storage system in the form requested by the commissioner.

**399-A:18 Penalties.**

I. Any person and the several members, officers, directors, agents, and employees thereof who shall knowingly violate any provision of this chapter, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

II. Any person violating the provisions of RSA 399-A:12 through RSA 399-A:15 or engaging in the business of a small loan lender, payday loan lender, or title loan lender without first obtaining a license if a license is required under this chapter shall be barred from recovering any finance charge, delinquency, or collection charge on the contract.

III. Any person who knowingly violates any rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to such suspension or revocation of any registration or license, or administrative fine not to exceed \$2,500 for each violation in lieu of or in addition to such suspension or revocation as may be applicable under this title for violation of the provision to which such rule or order relates. Each of the acts specified shall constitute a separate violation.

IV. Any person who negligently violates any rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to such suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or administrative fine not to exceed \$1,500 for each violation in lieu of or in addition to such suspension or revocation as may be applicable under this title for violation of the provision to which such rule or order relates. Each of the acts specified shall constitute a separate violation.

V. Any person who, either knowingly or negligently, violates any provision of this chapter may, upon notice and opportunity for hearing, and in addition to any such other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, including forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and each such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed.

VI. Every person who directly or indirectly controls a person liable under this section, every partner, principal executive officer or director of such person, every person occupying a similar status or performing

a similar function, every employee of such person who materially aids in the act constituting the violation, and every licensee or person acting as a common law agent who materially aids in the acts constituting the violation, either knowingly or negligently, may, upon notice and opportunity for hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed. No person shall be liable under this paragraph who shall sustain the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist.

399-A:19 Review. In addition to any other available remedy, any person considering himself or herself aggrieved by any act or omission of the commissioner may, within 30 days from the date of such act, or failure to act, bring an action in the superior court to review such act, or failure to act. The hearing before the court shall be based on the record before the commissioner and his or her findings and on such new evidence as may be introduced.

42 Effective Date. This act shall take effect 30 days after its passage.

**2003-1736s**

### AMENDED ANALYSIS

This bill makes various changes to the laws governing first and second mortgage brokers and providers of mortgage services.

This bill also defines and regulates small loans, title loans, and payday loans.

SENATOR FLANDERS: Thank you Mr. President. I rise to offer a floor amendment. Very briefly, sometime ago, we passed this exact wording on small payday loans and mortgage loans. And because of some rewrite that is going on in the House, I would like to add this to HB 817 to be assured that this fine piece of legislation...these new type of businesses will stay intact. Thank you.

**Floor amendment adopted.**

### PARLIAMENTARY INQUIRY

SENATOR BOYCE: Parliamentary inquiry.

SENATOR EATON (In the Chair): Senator Boyce.

SENATOR BOYCE: Will this be going to Finance?

SENATOR EATON (In the Chair): This will not be going to Finance.

SENATOR BOYCE: Okay. Then I would like to ask a question of Senator Flanders. I see in this that there is a change in the date of filing for a license. I am not sure how many of these licenses will be done. It changes the date from August to December to make it a calendar year, I assume?

SENATOR FLANDERS: Yes.

SENATOR BOYCE: The problem is, if that means that somebody who has a license today, gets a year and a half license, that means that there will be a decrease in the amount of money for one year. I don't know how many of these there are and whether that is going to be a significant amount of money. If the effect of that is to make it so that

the licenses are only a half of a year, then somebody would probably complain. I was just wondering if that came up and how many of these would be done?

SENATOR FLANDERS: We didn't have...we had no testimony on that. We just talked about it was going to be easier to renew licenses. There was no testimony on the binding of the...the finding that we had was of no financial impact. That was based upon the testimony that we heard.

SENATOR BOYCE: I just...it just occurs to me that there may be a shortfall and where ever that money goes, the first year that this goes into effect.

SENATOR FLANDERS: Well let me answer that. That is strictly, the Banking Commission is strictly self-funding, so it has nothing to do with the general fund.

SENATOR BOYCE: So if they don't have enough money they just won't do something?

SENATOR FLANDERS: Well, either that or they will go and do another audit.

SENATOR BOYCE: Thank you.

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 135-FN-L**, relative to charter schools. Education Committee. Ought to pass with amendment, Vote 3-2. Senator O'Hearn for the committee.

**Senate Education**

**May 15, 2003**

**2003-1664s**

**04/10**

### **Amendment to HB 135-FN-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Pilot Program; Charter Schools and Open Enrollment Schools; Alternative Procedure for Approval of Charter Schools. Amend RSA 194-B by inserting after section 3 the following new section:

194-B:3-a Charter School Approval by State Board of Education; Pilot Program.

I. There is established a 10-year pilot program which authorizes the state board of education to grant charter status under this section. Beginning July 1, 2003, the state board of education shall be authorized to grant no more than 20 state charter school applications during the 10-year pilot program.

II. The proposed charter school application shall be presented for approval directly to the state board of education by the applicant for the prospective charter school no later than June 15 annually. The content of such application shall conform to the requirements set forth in RSA 194-B:3, II(a)-(bb). The department of education shall notify an applicant of any missing information within 10 days of the initial filing or by June 30, whichever is earlier. The applicant shall have until July 15 to refile an application.

III. The department of education may forward the proposed application to the applicant, along with a written statement detailing any suggested amendments or modifications.



IV. By September 30 of the given year, the state board of education shall either approve or deny an application based on the criteria set forth in RSA 194-B:1-a. Approval of an application constitutes the granting of charter status and the right to operate as a charter school. The state board of education shall notify all applicants of its decision, and shall include in any notice of denial a statement that the applicant may re-apply under RSA 194-B:3, RSA 194-B:4, or under this section in a subsequent year.

V.(a) The following provisions of law shall not apply to charter school applications proposed under this section, or to charter schools granted approval for operation under this section:

- (1) RSA 194-B:3, II(cc).
- (2) RSA 194-B:3, III-IV.
- (3) RSA 194-B:3, XI.
- (4) RSA 194-B:4.
- (5) RSA 194-B:15, II.

(b) Except as provided in this paragraph, the provisions of RSA 194-B shall apply to charter schools approved for operation by the state board of education under this section.

(c) Not more than 10 percent of the resident pupils in any grade shall be eligible to transfer to a charter school in any school year without the approval of the local school board.

2 Charter School Funding. Amend RSA 194-B:11, I to read as follows:

I. There shall be no tuition charge for any pupil attending an open enrollment or charter conversion school located in that pupil's resident district. Funding limitations in this chapter shall not be applicable to charter conversion or open enrollment schools located in a pupil's resident district. For any other charter or open enrollment school **authorized by the school district**, the pupil's resident district shall pay to such school an amount equal to not less than 80 percent of that district's average cost per pupil as determined by the department of education using the most recent available data as reported by the district to the department. ***For any charter school authorized by the state board of education, the pupil's resident district shall pay tuition in an amount not less than the base cost per pupil as determined in RSA 198:40, as adjusted for grade level weights set forth in RSA 198:38, VII.*** Tuition amounts shall be prorated on a per diem basis for pupils attending a school for less than a full school year. To the extent permitted by law, ~~[funding for a pupil attending a charter or open enrollment school shall be paid on the same time schedule as the resident district.]~~ ***tuition payments shall coincide with the distribution of adequacy grants under RSA 198:42*** or on such other terms as ~~[the school and the funding source may find]~~ ***are*** mutually acceptable.

3 New Paragraphs; Charter School Funding. Amend RSA 194-B:11 by inserting after paragraph VIII the following new paragraphs:

IX.(a) The pupil's resident school district or department of education shall pay tuition in cash or may issue reimbursement anticipation notes as set forth in RSA 198:20-d for each year in which a resident pupil attends a charter school. Unless otherwise agreed upon, cash payment shall coincide with the schedule for grant payment set forth in RSA 198:42. The reimbursement anticipation note shall be in the amount specified for the year of attendance at the charter school, and shall be issued to the charter school prior to the beginning of the school year of the charter school. Each reimbursement anticipation note issued shall be for a term of 3 years

from the date of issue or may be redeemable by the charter school at such time as the charter school or the pupil's resident school district receives adequate education grant amounts pursuant to RSA 198:42.

(b) Upon receipt of such reimbursement anticipation notes, the charter school may elect to borrow funds for the purpose of meeting general operating and maintenance expenses for charter school operations.

X. A charter school may operate as a separate local educational agency for the purposes of federal law.

XI. There shall be an appropriation in the fiscal year beginning on July 1, 2003 for the establishment of charter schools under this section. Charter schools which are eligible for grants under this program shall match funds provided by the state through private contributions in order to receive funding that exceeds the state's average per pupil cost for the grade level weight of the pupil. State funds shall be provided in addition to any other sums provided by the state. Grants under this section shall be administered and determined by the state board of education who shall have the authority to develop a grant application, written procedures and criteria used to determine eligibility for grants, and procedures for the administration of grants by recipients, including reporting requirements. The total grants provided under this program shall not exceed the amount of money appropriated in the budget, or transferred, or provided by gift or grant to the state for this purpose.

XII. Any money appropriated in the budget for matching charter school grants that remains unused after the department of education issues matching grants to eligible recipients under paragraph XI shall be used to provide a one-year transitional grant to public school districts that have lost pupils as a result of the establishment of a charter school, and have paid tuition to the charter school in cash pursuant to subparagraph IX(a). For the first year in which a public school pupil leaves the public school and enrolls in a charter school, the school district that loses the pupil shall be eligible for a charter school transitional grant of up to \$3,390 per pupil. Such transitional grants shall be administered by the state board of education which shall have the authority to determine eligibility and the amount of money to be awarded to school districts under this section, subject to the amount appropriated in the budget.

4 New Paragraph; Charter and Open Enrollment Schools; Duties of the Board of Trustees. Amend RSA 194-B:5 by inserting after paragraph V the following new paragraph:

VI. The meetings and proceedings of the board of trustees shall be held in public session pursuant to RSA 91-A:2, except for those meetings or proceedings designated as nonpublic sessions as defined in RSA 91-A:3, II.

5 New Paragraph; Charter Schools; Grievance Procedures. Amend RSA 194-B:15 by inserting after paragraph II the following new paragraph:

III. An individual or group aggrieved by a decision of the board of trustees of a charter school authorized under RSA 194-B:3-a shall first present their complaint to the board of trustees. If the board's decision remains unfavorable, an individual or group may appeal such decision in accordance with the same procedure for adjudicating disputes between an individual and a local school board.

6 New Paragraph; Charter Schools; Authority and Duties of Board of Trustees. Amend RSA 194-B:5 by inserting after paragraph IV the following new paragraph:

IV-a. For charter schools authorized under RSA 194-B:3-a, the board of trustees shall report to the state board of education, or their designee, on a quarterly basis regarding the charter school's progress in achieving

its stated goals. The charter school may request technical assistance or advice from the department of education. The department of education shall assist the charter school in developing a quarterly report that is mutually acceptable, provided that each quarterly report shall include a financial statement. A copy of the quarterly report shall be available to participating school districts and parents of children attending the charter school.

7 Repeal. The following are repealed:

I. RSA 194-B:3-a, relative to direct approval of charter schools by the state board of education.

II. RSA 194-B:15, III, relative to a grievance procedure for charter schools authorized by the state board of education.

III. RSA 194-B:5, IV-a, relative to the reporting requirement for charter schools authorized by the state board of education.

8 Effective Date.

I. Section 7 of this act shall take effect July 1, 2013.

II. The remainder of this act shall take effect July 1, 2003.

**2003-1664s**

### AMENDED ANALYSIS

This bill establishes a 10-year pilot program for the approval of up to 20 charter schools by the state board of education and creates certain exemptions from existing law relative to the approval process, while subjecting charter schools approved by the state board of education to the same oversight and reporting requirements found in the existing charter school laws. The bill provides that funding for charter schools shall be through reimbursement anticipation notes or cash tuition payments directly payable to the charter school, and establishes a state matching grant program for charter schools. The bill also provides that a charter school shall be considered to be a public charter school and a separate local educational agency for the purposes of federal law and federal funding.

SENATOR O'HEARN: Thank you Mr. President. I move HB 135 ought to pass with amendment. We had several people testify that they would like to open charter schools in New Hampshire, but found that the charter school statutes to be so cumbersome. The fact that there are no charter schools in New Hampshire is evidence that our charter school laws are not effective and difficult to muddle through. The amendment to the bill makes several changes. Twenty state charter school applications will now be accepted during a ten-year pilot period which will require approval by the state board. Ten percent of the students may attend charter schools outside of their resident district. Anymore than that must be authorized by the school district. An avenue has been established for grievances against the charter school to be addressed through the state board. The initial approval date has been moved to July 1 in order to maximize federal dollars already awarded to...no, it has not been already awarded. The approval date has been moved to July 1 in order to maximize the opportunity for the federal dollars to have start-up charter schools. There is \$7.2 million that the Department of Education has applied for in grants for start-ups for our charter schools. This is an optional program. It still keeps our old charter school law in place and this then allows a regional charter school to take place where several communities can come together to start a charter school. I ask for your support on HB 135. Thank you.

SENATOR LARSEN: I rise to express concern about the amendment printed in our Senate Calendar and the proposal that charter schools in

fact would be approved solely with the approval by going directly to the State Board of Education by the applicant. I think that if you think through this whole process, we are currently amending our education finance formula. This amendment, creating a ten-year pilot program for charter schools, will in fact, permit certain school districts who aren't even necessarily eager to see a charter school established in their district, they will in fact, have to accept a charter school if it is approved directly by the State Board of Education. In perhaps a property wealthy community this might work. They may have excess student funds to support their pupils, and they may be willing in fact to use some of their funds to create a charter school, but there is no measure of communities interest or community support for the charter school, but it is in fact left solely up to the State Board of Education. You will hear, as most of you are aware, that we are in the process of changing the way that we fund our state responsibility on education. There will in fact, as are now, be some communities who receive very little funding per pupil and yet that may be the very same community which the State Education Board decides is one which they are going to grant a charter school in. As I was looking last night, I saw for example, that Exeter, in the hearing, someone came and said that some of the communities in Exeter and Kingston were interested in creating a charter school. That would be fine if we appropriated adequate funding to permit not only the operation of the public school, but perhaps a pilot program which was a charter school, but we are in fact asking the communities to accept a charter school without any additional funding, but to incorporate that with what they would have to run not only their current public schools, but operate a charter school as well. If you look at Exeter in the state aid formula, as we suspect may pass this body today, Exeter would lose something in the vicinity, and I am going from memory, but millions of dollars from the current formula, under the new plan that the Senate may pass. So Exeter would be in a position of losing state funding for education and having to incorporate and run a new charter school. So I call these issues to your attention. I don't...I think many of us don't have a problem with trying new and creative ways to fund our schools, and ways to look at how we offer education to young people, and are there ways to create magnet schools or charter schools which encourage perhaps a different approach through the different system, but you can't expect a community to incorporate in an underfunded education system to include yet another full operation of schools, the charter school, that they would have to adopt within their own community. I also would point out that I have a floor amendment which may or may not be the appropriate time to introduce, which addresses that issue of who shall pay for the cost of operating. Should it be from the state education grants or should it in fact be from a separate funded method and that floor amendment I have ready, Mr. President. Mr. President, is this an appropriate time?

SENATOR EATON (In the Chair): You must vote on the committee amendment first.

SENATOR LARSEN: You have to vote on this amendment first. Thank you.

SENATOR ESTABROOK: Senator Larsen, as you talk about the fiscal impact of this bill on local communities, even though they have no say any longer in the approval of these schools, I noticed that the committee amendment also changed the responsibility of the charter school for special education cost. Whereas the House version had made those costs the responsibility of the charter school, the Senate amendment leaves

that as optional. So if a charter school chooses not to incur the costs of special education for one of its enrolled students, does that mean that the resident district of that student is still responsible for those costs? And is the resident district also, as the lead educational agency the LEA, responsible for overseeing the implementation of the child's IEP?

SENATOR LARSEN: My understanding was yes, the resident school district is still responsible for the special education costs and for the follow-through of the IDEA.

SENATOR COHEN: Senator Larsen, if I am reading this right...tell me if I am right or wrong here, that under this bill as amended by the committee, is it possible that the city of Portsmouth for example, which has been under terrific stress right now, paying a lot of money from Portsmouth to leave, to support other schools, that they could certainly have an additional burden and be forced to pay for schools that they don't want?

SENATOR LARSEN: If they can convince the State Board of Education that Portsmouth is the place that a charter school should be established, yes, Portsmouth would have to accept that charter school and find methods of paying for it from within their existing school funding, both local property tax and whatever minimal state education aid goes to Portsmouth. So it does in fact drain off what support there would be in the public school to operate a fully new school.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise to speak against HB 135-FN. As many of my colleagues, I have served on a local school board. Senator Johnson is a long-time school board member, Senator Barnes, I can recall him speaking about his activities on the Raymond School Board and their intense interest in the local activity, the local option and working with the local community. I served on the Manchester School Board for ten years. My life has been in education. There are numerous opportunities in this state for alternate education. We have a number of private schools. We have a number of Christian schools, so there has been a proliferation of the growth of schools. The one area that doesn't seem to be getting the kind of attention, obviously, is the public system. What this does is withdraws from that public system, some finances that the public system needs in order to move forward. It does it without the ability of the locality. That local community to either authorize or vote against this particular proposal. The law also says that we will have "X" number over a period of time. They will then come to the local district and take finances from the local district. Anyone who has served on a local school board knows that we need every dollar to make our schools work. Public education is the cornerstone of a free society. A free public education made this democracy great. What we are doing by putting things like this together is diluting the opportunity, not increasing, but diluting the opportunity. In my community, we have had the ability to work to get a charter school for the last ten years. We have never done it because it has been the local option of the people of the city of Manchester to say that "we don't want a charter school", but what we did do was say that we were going to improve our schools. We have a major capital expenditure to improve our schools. We have done curriculum changes to improve our schools. It seems to me that on the one hand, when the local communities are trying to do this, and I speak exclusively about my community, on the other side, there is the tendency to take money away, or someone has the desire to take money away, by moving into the charter school arena. I have seen charter schools around the country. Char-

ter schools cater to very specific clients. They become very homogeneous institutions. Not the heterogeneous institution that a public school is. By creating homogeneous institutions, we are moving away from an integrated society. I have seen it time and time again. I might also say that these charter schools around the country have been failures. They haven't been successful. I don't understand why at a time when we have every intention, I believe, of improving our public education, we are looking for alternate methods, and these methods in essence, would detract from our ability to do good things for public education. Thank you Mr. President.

SENATOR FOSTER: Thank you Mr. President. I hate to be repetitive here but I do want to go over some of the points that I think Senator Larsen touched on. I usually don't do that. I didn't speak this morning because I thought people on both sides of the issue hit all of the arguments quite well, but I really do have a serious concern with this bill. It is not over whether charter schools are a good idea or a bad idea, I happen not to think that they would be a panacea, but they might be good, they might be helpful. Senator O'Hearn said that it is the burdensome regulations that have stopped us from adopting charter schools in the state. I really think that it is another reason. I think the problem is the funding and the way that we fund our schools in this state, generally speaking. I remember a Michelob ad, I think it was, a few years ago that said, "who says you can't have it all"? Well you can't have it all if you don't have the funds to pay for everything. That is really, I think, the problem, what we have here. A lot of you feel that charter schools are important. I know that the other Senator from Nashua thinks that it is a critical part of education reform. I think that we have to show it by being willing to fund it, but we are not willing to fund it. Take a look at the amendment on page 12 of the bill and you will see, at least as I understand it, that there are sort of two methods by which charter schools would be funded. One instance is where the local school district decides to have it. What the bill says is that 80 percent of the districts average costs will be paid by the district. That is fine. I don't think that any of us have any particular problem with that if a local community wants to adopt a charter school, that is okay. But that hasn't happened. I think that it hasn't happened for the reasons that Senator D'Allesandro touched on before, that it means that money is coming out of the public school system. So what does this bill do? Well this bill does something different. It says, you know what? Even if your local community doesn't want it at all, we, the State Board of Education are going to say, guess what? We are going to put it there. We are going to make you have a charter school in your district. I received an email, I think it was last evening, from Susan Hollands, who I think is active in this area. There are a lot of communities or people from a lot of communities, looking at it. I want to read these because you should think about this when I get to my next point because these are in your areas. Lebanon, Hanover, New London, Plainfield, Warner, Henniker, Durham, Derry, Londonderry, Manchester, Keene area, Tamworth, Jackson, Bartlett, Bedford, Windham, Nashua, Concord, Franklin, Dover, Rochester, Portsmouth, Mason, Middleton, Exeter, Wolfeboro, Newport, Croydon, I probably butchered that, I haven't heard of that community, Grafton, Claremont, and she says quite a few other communities have expressed interest. Under the bill I think, we can do up to 20 I believe over a ten year period. But presumably, that is what the State Board's going to do. They are going to place 20 of these

schools around the state. Go on and look at the amendment. It goes on to say that "for any charter school authorized by the State Board of Education." "By the State Board of Education." Not the local community. "the pupils, resident district 'shall', not 'may', 'shall', pay tuition in an amount not less than the base cost per pupil as determined under RSA 198:40 as adjusted for grade level" and so forth. Now the idea of that, as I understood it, as it came over from the House is that right now we have the statewide property tax and I think it is at \$5.80, I am not sure the exact amount. We are going to talk about it in a little bit. Every community raises that and it stays in most communities. Some communities pour some of it over, but it is a state tax. I think the idea here is, oh really, the state is going to be paying for that adequacy cost because you have the statewide property tax. We are going to, in a few minutes, maybe more than a few minutes, depending on long we go here, get to the Gatsas amendment to HB 608 and there is a transition year and nothing really is going to change, but after that, we are only going to have a statewide property tax, I think it is called the "enhanced education tax". I may have that slightly off, of \$3.50. That raises \$1,800, I believe. Nowhere near an adequacy amount, so what does that mean? That means that after the bill goes into effect, and I think that it will probably pass here today, there is not going to be any state tax paying for this adequacy amount, it is going to be local property tax dollars. In the case of Portsmouth, I don't believe the city of Portsmouth, I could have this wrong, is going to receive any aid, once the bill kicks into effect. Portsmouth is one of the target areas here. They are going to have to put their hands in their pocket and pay local property tax dollars. I think that is wrong. I think that invades...in this bill more than any other that I have seen so far, interferes with local control. I also wonder whether it is a 28-a unfunded mandate. Because what we are telling the local communities is that you have to have a school and you have to pay for those kids to go to that school whether you like it or not. I think that is wrong; that is why I voted against the bill in committee. Senator Larsen's amendment, which she is going to submit later, I think, takes care of that. I would ask you to support that amendment when it comes up. Thank you.

SENATOR GATSAS: Thank you Mr. President. Senator Foster, you were reading from page 12?

SENATOR FOSTER: Yes.

SENATOR GATSAS: And you concluded under distribution of adequacy grants under RSA 198:42, and then it continues to say, "or on such other terms as are mutually acceptable." So it really means that the adequacy grants can be used as a tuition or other terms that are mutually acceptable.

SENATOR FOSTER: I am trying to find the language Senator Gatsas.

SENATOR GATSAS: Page 12 last line.

SENATOR FOSTER: That is a new sentence, I think. It is a new concept. I don't think that it is going to change the amounts and further, for what we are talking about, I guess I am not certain of the question. Maybe you could rephrase it?

SENATOR GATSAS: The question is that it talks about adequacy grants, or on "such other terms", and I assume "terms", legal terms would be payment or amount of payment, "as are mutually acceptable."

SENATOR FOSTER: To whom, I guess, would be my question? As I read the previous sentence, it is mandating the local community to pay that tuition. So I don't see that there is a choice there. I am not quite sure how that last sentence modifies the previous one. But as I read the bill, they have to pay the adequacy amount whether they like it or not.

SENATOR GATSAS: Thank you.

SENATOR ESTABROOK: Thank you Mr. President. Senator Foster, would you agree that the issue that I raised earlier with Senator Larsen, regarding special education responsibilities remaining with local school districts, adds to the 28-A issue that you have raised here?

SENATOR FOSTER: I would assume the local districts will have to pick up those costs, yes.

SENATOR ESTABROOK: Thank you.

SENATOR O'HEARN: Thank you Mr. President. I ask that we finally move on with this and start doing something to make our state more open to starting charter schools. I remind you that a charter school is a public school, serving public children. It is foolish for us to think that just because you live in a specific district, that that public school is going to serve every single child living within that district. We are saying that this is one size fits all. Charter schools have a specific purpose for specific reasons. The one charter school that we learned about recently is in Roxbury in a very poor section of Boston, outside of Boston. Charter school for middle school boys. For the purposes of bringing them up to levels where they can attain a better education. They have two courses in math and two courses in English per day. These kids are kids that are candidates for Boston Latin and are very successful as they move on. I think that it is time that we try it. Move on. I know that things are going to have to be changed, depending on what funding source we have, but it is time to move on. Stop moving into this rhetoric. Stop putting fear into people that this is going to take away from the public school. What this is going to do... this is a public school. Please let's move on with this.

SENATOR BARNES: Thank you Mr. President. Senator O'Hearn, you threw a name out, of a school that a lot of folks in here might not realize the importance and the prestige of it. Would you please explain that?

SENATOR O'HEARN: Boston Latin is a very prestigious public high school in the Boston area that accepts only the best and the brightest, and this is taking children from the very poor district and bringing them to the level where they can compete with the best and the brightest. Thank you.

SENATOR BARNES: Thank you, because that is something that some of the folks might not realize.

SENATOR PRESCOTT: Thank you Mr. President. Senator O'Hearn, on page 13 referring to the amendment, section seven, in the middle of section seven, "for the first year in which a public school pupil leaves the public school and enrolls in a charter school. The school district that loses the pupil shall be eligible for a charter school transitional grant of up to \$3,390 per pupil." Could you please explain that?

SENATOR O'HEARN: Thank you Senator Prescott. A lot of this is dependent on what happens in Finance. In the Governor's budget he has transitional grant money available for charter schools. The House has removed that transitional grant. It is now in our hands whether we are going to put it back in. There is still work that needs to be done. I am asking that



this be moved on. I recognize that we do have concerns with our budget, but maybe there will be some money available there. We are also looking for the \$7.2 million in start-up grants from the federal government.

SENATOR CLEGG: Thank you Mr. President. I rise in support of the amendment and the bill. For the last few sessions, we have looked at different pieces of legislation that talk about dropouts. One piece that I voted against was to spend \$750,000 to try to figure out how to get kids to stay in a public school that didn't want to be in. I look at charter schools as an opportunity to give those kids, who don't want to stay in the current public schools, an alternative. Now I understand that there are private schools and there is alternative schools, but if you can't afford to go, you are stuck. Many of us when we grew up, we couldn't afford to go to different schools. We had to go to public schools. I understand that there is a charter school in the works that would be, I guess the proper word is "pointed to" performing arts. So maybe we have some children out there who want to be in the performing arts, can't stand to go to school, but by going to this charter school, they will be doing what it is they want to do, and they will also be learning the other basics. To me, a charter school in this bill, is a great deal compared to spending \$750,000 on someone who doesn't want to stay in school because it is not providing him what it is that he is looking for. Thank you.

SENATOR D'ALLESANDRO: Thank you Mr. President. I just want to speak briefly about a couple of things. First of all, the financial situation. It is a loss of funds for the public schools. Obviously it indicates that. And this transition grant isn't funded so I don't know where the money is going to come from. Secondly, we are creating a homogeneous situation. I don't think that is good. Within the public system, we are not perfect. But let me tell you that within the public system, we do some pretty darn good things. We have had two Rhodes scholars come out of Manchester High School Central. That is the oldest public high school in the state of New Hampshire, 150 years old. Two Rhodes scholars. We have also had kids go through an alternative program, called the Pass Program, who really didn't want to be at Manchester High School Central, but we made an opportunity for them to go to school within our system, and that opportunity is available for kids who don't want the traditional setting, but need something else. The public school has provided that. The public school bears the responsibility for that. That is why public education is so important in a free society. When you look at societies around the world, they all have specialty schools. Public education goes down the tubes. That is why we are successful and they are not. I think that anything that detracts from the public sector is a real problem. We have lots of private schools. We have lots of religious schools. We have lots of other options that are available. We have K through college, they are available and most of them supply plenty of financial assistance for students who don't have any money. There is a needs base formula, they do that. But a quality public education is something that we all should be striving for. Things like this detract from our ability to provide the best public education available. Thank you Mr. President.

SENATOR BARNES: Senator D'Allesandro, after you get through coughing. Are you okay?

SENATOR D'ALLESANDRO: I am fine Senator Barnes. Thank you for inquiring about my health. I appreciate that.

SENATOR BARNES: I am always concerned about your health.

SENATOR D'ALLESANDRO: I appreciate that also.

SENATOR BARNES: Senator, would you believe that I know that you are very proud of those two Rhodes scholars that came out of Central, out of Manchester? But would you also believe that I am very proud of two people that graduated from your West High School, call the McDonald brothers who started the Fortune 500 company?

SENATOR D'ALLESANDRO: I would believe that, absolutely. I might say that, God rest his soul, Mr. McDonald was a great supporter of mine. He also...Mr. McDonald married a classmate of mine's wife. How's that, Jack?

SENATOR BARNES: Did you teach Mr. McDonald?

SENATOR D'ALLESANDRO: I didn't teach him, but I learned a lot from him. Thank you Mr. President.

SENATOR EATON (In the Chair): Thank you for the history lesson.

### **Amendment adopted.**

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist. 15

**May 21, 2003**

**2003-1760s**

**04/10**

### **Floor Amendment to HB 135-FN-LOCAL**

Amend RSA 194-B:11, I as inserted by section 2 of the bill by replacing it with the following:

I. There shall be no tuition charge for any pupil attending an open enrollment or charter conversion school located in that pupil's resident district. Funding limitations in this chapter shall not be applicable to charter conversion or open enrollment schools located in a pupil's resident district. For any other charter or open enrollment school ***authorized by the school district***, the pupil's resident district shall pay to such school an amount equal to not less than 80 percent of that district's average cost per pupil as determined by the department of education using the most recent available data as reported by the district to the department. ***For any charter school authorized by the state board of education, the state shall pay tuition, from funds appropriated under paragraph XI of this section, in an amount not less than the base cost per pupil as determined in RSA 198:40, as adjusted for grade level weights set forth in RSA 198:38, VII.*** Tuition amounts shall be prorated on a per diem basis for pupils attending a school for less than a full school year. To the extent permitted by law, [funding for a pupil attending a charter or open enrollment school shall be paid on the same time schedule as the resident district,] ***tuition payments shall coincide with the distribution of adequacy grants under RSA 198:42 or on such other terms as [the school and the funding source may find] are mutually acceptable.***

**2003-1760s**

### **AMENDED ANALYSIS**

This bill establishes a 10-year pilot program for the approval of up to 20 charter schools by the state board of education and creates certain exemptions from existing law relative to the approval process, while subjecting charter schools approved by the state board of education to the same oversight and reporting requirements found in the existing

charter school laws. The bill provides that funding for charter schools shall be through reimbursement anticipation notes, cash tuition payments directly payable to the charter school, or state funds if the charter school is authorized by the state board of education, and establishes a state matching grant program for charter schools. The bill also provides that a charter school shall be considered to be a public charter school and a separate local educational agency for the purposes of federal law and federal funding.

SENATOR LARSEN: Thank you Mr. President. I rise to offer a floor amendment. This floor amendment clarifies what is in the current language, which is that if a charter school or open enrollment school is authorized by the school district, the pupils resident district shall pay the school such an amount equal to not less than 80 percent of the district average cost per pupil. But what it further clarifies is that is basically existing language, existing law, but as you are receiving this, you will see the floor amendment further clarifies that for any charter school authorized by the State Board of Education, the state shall pay the tuition from funds appropriated under paragraph XI of this section. If you look on section eleven of this section, on page 13, that refers to that "there shall be an appropriation in the fiscal year for the establishment of charter schools under this section." It very clearly sets it up that if a local school district approves a charter school, they pay for it through their tuition, their aid. But if it is in fact, authorized by the State Board of Education, then there's been no local input. There may be no local ability to support a second school. And in that case, then the charter school is paid for by the state. We have seen in and out of our budget, and I know that it has been in at least through the Benson proposal, that there were funds in there for charter schools separate from our adequacy grants. The issue is how much do you want a charter school? Do you want it enough to put it in the budget in a way that is appropriate? Once again I would remind you that under the new plan for funding education that may come out of this Senate, many, many, many communities will see a reduction over what they have been receiving in the past few years. I don't mean to pick on the towns that I mentioned before, but there was a speaker named Pat Collopy in Senate Education and she testified that she would like to open charter schools in the New Hampshire seacoast, including Brentwood, Exeter, Kensington, East Kingston, and Stratham. I went and looked at how the Gatsas plan would affect those communities. Brentwood would receive \$700,000 less than if the current formula were allowed to act with a reduced statewide property tax. Exeter would see a reduction of \$3.8 million. Kensington would see a reduction of \$500,000. East Kingston would see \$672,000 and Stratham would see \$1.8 million in reduction, and yet those are the very communities which may be told by the State Board of Education because of an enthusiastic group before the state board, that they should pay for an additional school. So they would have not only Exeter, for example, see a reduction of \$3.8 million in state aid to education, but they would have to start a whole new school and fund it within their own state grants. Once again, I would reiterate that these options for charter schools, I would like to see our states support public schools as strongly as it can. I think that you all know from my years here that I believe that it is truly the foundation of our democracy. But there is nothing wrong with some ability to try other ways, and can we create pilot programs for charter schools? Maybe it makes some sense, but it shouldn't come out of the state education grants that schools are already struggling to make ends meet with. It should in fact, be a state responsibility because

it will be a state approved entity. It does become a 28-A issue. There are just a few of us here in the room who remember not so long ago when Jim Ruben sat in this seat, I knew it was to my left anyway, which was usual, but Jim Ruben sat and spoke for charter schools. In the end, the decision was that charter schools were okay if a local community approved them. We have had many, many fights about local control in this body as well. More often than not, we have come down on the side of understanding that particularly when the local property taxpayers have to carry the load, we leave it up to local control to make the decisions. This is interesting that we are somehow now going to say that the State Board of Education can choose a community, put a charter school in there, whether or not they support it, and that local community is going to have to fund it. So I urge you to send the floor amendment 1760's to Finance. Give Finance the tools to look for ways to fund it. To decide if there are appropriate ways to fund it, but to recognize that we haven't over the past years, told local school districts what they have to pay for. As you will recall, in some of our accountability discussions, we don't tend to bring down the heavy hammer of this state on our schools. This would be a heavy hammer. This is hard to set up an entire new school. So I urge you to do it in a way that makes sense, that the state, if they want to see some pilot charter schools, the state is going to pay for it. Thank you Mr. President. I urge passage of 1760.

SENATOR PRESCOTT: Senator Larsen, when discussing numbers of aid from the state to attend, do you adjust for the tax rate being reduced from the statewide property tax rate of \$5.80 reduced by close to 50 percent down to \$3.50 when you site those numbers?

SENATOR LARSEN: I was using numbers that reduced the statewide property tax down to \$4.92 which is what would bring it down to a reasonable amount. Your is \$4.87? I believe the others are \$4.92. The \$3.50 in fact, assumes that those communities are going to cut...either cut their school district budget or make it up through local property tax. So reducing the statewide property tax down to \$3.50 seems to be a false savings to me because those communities are still going to have to run the school at approximately the same price and then in the future years, deal with inflation. But the numbers that I gave to you were a reduction of the statewide property tax from \$5.80 to \$4.92 I believe.

SENATOR PRESCOTT: Thank you very much.

SENATOR LARSEN: Those were the numbers that your communities would see reduced.

SENATOR SAPARETO: Thank you Mr. President. Senator Larsen, my question is how different is this than the funding that the Governor has proposed for the charter schools? How does this amount differ from that?

SENATOR LARSEN: If we pass the amendment as proposed in the Senate Calendar, it presumes that it will come out of state education grants and it doesn't...would not use the Governors proposed charter grant money if there were to be that money in the budget as the Senate passes it.

SENATOR SAPARETO: Thank you Mr. President. As I am reading this, "the amount not less than the base cost per pupil". How is that defined in comparison to the current grant amounts of the proposal that the Governor had for the schools?

SENATOR LARSEN: The language on page 13 that talks about the base cost per pupil, the transition grants?

SENATOR SAPARETO: No, in your amendment.

SENATOR LARSEN: Could you rephrase the question?

SENATOR SAPARETO: Yes, I am looking at how the charter school authorized... "For any charter school authorized by the state board of education, the state shall pay tuition, from funds appropriated under paragraph XI of this section, in an amount not less than the base cost per pupil as determined in RSA 198:40" which I don't have here, but how does that differ in the amount of payment as proposed by the Governor?

SENATOR LARSEN: This refers to the base cost per pupil that is part of the state adequacy grants and that is determined in RSA 198:40. The amount proposed by the Governor was a wholly independent charter school \$4 million. I am not aware that there was language that determined how that was distributed to the school districts that approved charter schools. So the amendment that I have given you is similar in its reference to based cost per pupil as is in the original bill. But we are simply saying that the state shall pay the tuition rather than the local school district taking it out of their state grants.

SENATOR SAPARETO: Thank you.

SENATOR GREEN: Thank you Mr. President. I think that we have an issue here that is being spun in the wrong direction and it bothers me that people are making political hay out of this bill because I hear people saying that I think that they are misrepresenting the tax proposal and the distribution of education funding that is going to be on this floor today, for their own benefit. Whatever their benefit is. The education funding does reduce the grant in some communities, but it also reduces the tax rate substantially. The basic feeling there is in most communities they will have the tax capacity to raise those funds if they so desire. I think that is a move in the right direction for local control. I don't have a problem with that. Then the issue of local control on schools, that we are going to take money from the public schools and give it to somebody else, is wrong, wrong, wrong. We are going to use public dollars for children who are already getting a public education. Charter schools in this bill are public schools. We are not taking and making charter schools, private schools and taking local dollars and giving them to private schools. I look at it as an alternative school. Many school districts in the state already have alternative schools. Who do you think funds those alternative schools? The public schools. It is part of our public school system. What is the problem? Why are people scared of something like this? It is almost like they are scared to see the change. Why are you nervous about giving children and parents a different alternative or a different choice for children who are not, for whatever reason, having difficulty with public schools. The other thing that is interesting is that this issue is over local control. Well you know, I don't see anything in this bill that says that the state cannot, if they so desire, provide some funds for local districts to do other things with charter schools. There is nothing here that forbids that. So this idea that the state has to jump in every time we are going to make a change, and we haven't provided supposedly, the ability of the local districts to have the funds to do what they are being asked to do...we are asking them to do what they are already doing. Just provide alternatives for those children they think needs them. So I am having a difficult time trying to figure out this problem of local control. Now the issue of whether the State Board of Education or the local school board or district should actually support or recommend these

charter schools, that is an issue for me as well as it is for you. But I think that at this point, as a pilot program, and to get it started, we ought to get it started. We ought to prove that it works. I think that is a legitimate thing for the state to do. At some point in the process if people feel that at that time, that the charter program and the pilot program works, then we should be given the consideration for local consideration of creating their own charter schools at their own decisionmaking, at that time in the process. I don't have a problem with what the bill does at this point in the game. I think that we ought to support the bill without the amendment, so I speak against the proposed amendment. Thank you.

SENATOR LARSEN: Senator Green, I am sorry that you felt that it was somehow being made a political hay. In fact, I am hoping to...I am in earnest in trying to understand how this is going to work in a community. I believe that you have been directly involved in running a school and you mentioned that you had no problem with alternative schools, and many school districts do that, which I agree with you wholeheartedly that they are good alternatives. But in an alternative school, wouldn't the community be the one that looks at their finances and says, yes, we can afford to set up an alternative school? Wouldn't that be the case?

SENATOR GREEN: That is true.

SENATOR LARSEN: But what...if what you have done is you ran Rochester schools. If the state had called you up one day and said "I want to let you know that we have approved a charter school and you are going to have to set it up, you are going to have to find the building, pay the heat, find the teachers, out of the tuition that you are currently running, the school that you are trying to run now". How do you do that?

SENATOR GREEN: I am always serving those children. If I wasn't serving those children, I was off not only considering my budgeting, and I wasn't getting state aid through the distribution formula, I would probably be upset. But I think that the state is making an earnest...and honest, earnest attempt to fund education. I think that the local districts have to fund the difference, and in the process of doing that we have to service those children. Whether we do it as an alternative school or the regular school program is immaterial to me. What is more important to me is those children are getting the kind of program in which they can succeed.

SENATOR LARSEN: The state's percent of funding education leaves a certain percent on the local property taxpayers. Right now it is 50/50 or 49/51?

SENATOR GREEN: So this debate is about state pays and how much local pays? That is a different debate. We will have that debate, but that has nothing to do with these charter school programs or these alternative schools. Whatever the decision is between the state, in terms of its decisionmaking and with the locals have to provide, we still have to provide an education. Call it what you want. This is not a private school. I am having a hard time thinking that people get the impression that we are taking public dollars and putting them somewhere else where it is going to cost us more money. That is not what is going on here. You are going to take the same public dollars to serve the same public children, and you are going to have to do it anyway. I don't see that as the argument. If you keep thinking that you are going to take public dollars and use them for private schools and drain the public schools, that is a

different argument. I don't see that happening here. I don't see this bill doing that. If you are reading it that way, I think that it is a misinterpretation or misrepresentation of the bill.

**SENATOR O'HEARN:** Thank you very much Mr. President. I think that Senator Green has said it all. This...what has been asked, what has been said, is a misrepresentation of the bill. You have to refer back to the old bill that we have in place. The plans have to be submitted to the State Board for approval. This isn't the local district paying for the heat, finding the teachers and finding the building. This is about another alternative to public school. I also would like to remind the Senate Education Committee that the Department of Education came in and testified that the state paying the tuition is not going to work in law, and that it would take a series of major changes for that to work. So this amendment will not work and I ask you to turn down the amendment.

**SENATOR ESTABROOK:** Thank you Mr. President. I just wanted to rise for a minute and take objection to the remarks that the arguments presented here regarding 28-A issues were an attempt to make political hay. I strongly object to that comment because I think that speaking for myself, I feel that there are real 28-A issues here. There are issues about who is making the decision versus who is paying for it. And while we may disagree about what the conclusion is when we examine the relationships, there is no cause to say that those who reach a different conclusion are making political hay.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator D'Allesandro.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 6 - Nays: 17**

**Floor amendment failed.**

**SENATOR ESTABROOK:** Thank you very much. We've spent quite a bit of time here talking about one of the issues involved in this bill. The Financial implications for the state and for the local communities. But even if we could get past these fiscal problems with the bill, I still feel that it would merit opposition for investing state dollars in unproven programs with little provision for measuring their effectiveness. We have heard, and it is true that charter schools around the nation have had a mixed bag of results. The Brookings Institution reviewed 99 and 00 reading in math achievement test scores of 376 charter schools in ten states and found that charter school students were on average, one-half to one year behind public school students. Arizona State University did another study analyzing the nearly 500 charter schools in Arizona and has categorized 36 percent of them as underperforming as opposed to 19 percent for public schools. In Texas, another state with a large number of charter schools, half of charter school students pass the state performance test compared to 80 percent in other Texas schools. The dropout rate is triple that of public schools. Because of the innovative nature of charter schools, the movement has been based on traded freedom from

regulation, for more, not less, accountability. While I think that parental satisfaction is important, I don't believe that accountability for expenditure of public funds should end there. To keep public schools public, communities in the state must insist on public oversight of educational institutions and have a process to pull the plug on ineffective ones. "We ought to prove that it works" as my colleague said earlier. To do this, we must measure their effectiveness and create performance based criteria for revoking charters. This bill does neither. Other states use mechanisms far more structured to judge the performance of their charter schools. At a minimum, charter schools should be subject to the same accountability standards as all other public schools. House Bill 135 remains a seriously flawed bill, and whether we support or oppose the development of charter schools, it does not provide for the accountability we will need to judge their effectiveness.

SENATOR O'HEARN: Thank you Mr. President. There have been...it has been 12 years since the nation has first started charter schools. There are 2,700 charter schools across this nation. To talk about 326 that are failing is not a good number to use. I would like to see us close a public school now because it's failing. That is not happening now. And yes, the charter schools in New Hampshire will have the same accountability standards that we have now. They have to take the assessment test and it is stated within the law, that that is the way that they have to operate. I ask that this move on. Stop this argument about success rates, failure rates. Let's move on. Let's think of the kids and let's start a charter school.

SENATOR ESTABROOK: Senator O'Hearn, 193-E, which is the current statute in place regarding school accountability, in section E-3, calls for all public schools to report performance on attendance and dropout rates, school environment indicators, proportion of graduating students, assessment tests and local assessment measures. Then it calls for the state Department of Education to provide a report that ranks that performance. Will charter schools be included in those provisions?

SENATOR O'HEARN: Senator Estabrook, we don't have charter schools for them to be part of the ranking. Once we do, maybe they will be in the profiles, but 194-B is our charter school provision. I can't give you the exact section of 194-B that does state it, but they say that charter schools shall follow the same accountability standards...shall be part of the assessment program that our other schools are in.

SENATOR ESTABROOK: Yes, I am aware of that, but my point is that there are other performance measures that other public schools are required to comply with, even under current law, never mind the accountability measures that are currently under debate here. And my question is, why charter schools should be exempt from those reporting requirements when it would help us to judge their effectiveness?

SENATOR O'HEARN: The judgement is going to come from those people that are running the school and from the State Board overseeing it. For those people that have the opportunity to go to the State Board if they'd like to close it. As for others...we don't have the charter schools to put sanctions on them. It is time...once we get the charter schools started, maybe we can include them in our school profiles so that we can see how our schools are doing. I don't see the profiles in all of this data, closing a public school as we have them now.



SENATOR ESTABROOK: Thank you.

Senator Barnes moved the question.

Adopted.

Question is on the adoption of the bill as amended.

A roll call was requested by Senator Estabrook.

Seconded by Senator Larsen.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.

The following Senators voted No: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.

Yeas: 17 - Nays: 6

Adopted.

Referred to the Finance Committee (Rule #26).

SENATOR PETERSON (Rule #44): Mr. President, it was not terribly important for me to speak before voting as I did intend to vote this bill onto Finance, but I did want to have a chance to put on the record, some of the reasons that I did so, and some of the concerns that I have with the bill. I believe that there are some serious issues to look at in Finance with the charter school bill. The two major ones being the start-up grants, where is the funding coming from? And also, and I think most importantly, if we adopt a new perspective on school funding, what exactly is based adequacy going to mean when the communities are asked to remove that portion from their budgets when a student leaves the system? I think that these things need to be looked at carefully. I have four children. Four daughters, one through the public school system and the other three in the public school system. I want to support an opportunity for experimentation, for creativity. My wife, when she was in high school, actually attended an alternative school that was paid for by a public system. I am very well aware that one size does not fit all in education and that students receive information differently. So I think that it is important that we try to move forward in a substantive way and support alternatives in education, but retain these concerns, which will be brought along with the bill to Finance. Thank you Mr. President.

**HB 608-FN-L**, reducing the education property tax rate and relative to the calculation of adequate education grants. Education Committee. Ought to pass with amendment, Vote 3-2. Senator O'Hearn for the committee.

**Senate Education**

**May 15, 2003**

**2003-1656s**

**04/05**

### **Amendment to HB 608-FN-LOCAL**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to the funding of public education.

Amend the bill by replacing all after the enacting clause with the following:

1 Education Property Tax; Rate Reduced. Amend RSA 76:3 to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate of [~~\$5.80~~] **\$4.87** on each \$1000 of the value of taxable property is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F.

2 State Enhanced Education Tax. RSA 76:3 is repealed and reenacted to read as follows:

76:3 State Enhanced Education Tax. An annual state enhanced education tax at the uniform rate of \$3.50 on each \$1,000 of the value of taxable property is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F.

3 State Enhanced Education Tax. RSA 76:3 is repealed and reenacted to read as follows:

76:3 State Enhanced Education Tax. Beginning July 1, 2005, and every fiscal year thereafter, the state enhanced education tax rate shall be determined in accordance with the calculation set forth in RSA 198:40-b, and such rate shall be imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F. The commissioner of the department of revenue administration shall set the rate which shall be effective for the fiscal year in which the calculation is made.

4 Assessment; Commissioner's Warrant; Commissioner's Report. Amend RSA 76:8 and 76:9 to read as follows:

76:8 Commissioner's Warrant.

I. The commissioner of revenue administration shall annually calculate the proportion of *state enhanced* education [~~property~~] tax to be raised by each municipality by multiplying the uniform education property tax rate by the total equalized value of all property in the municipality as determined under RSA 21-J:3, XIII for the preceding year, except property taxable under RSA 82 or RSA 83-F.

II. The commissioner shall issue a warrant under the commissioner's hand and official seal for the amount computed in paragraph I to the selectmen or assessors of each municipality by December 15 directing them to assess such sum and pay it to the municipality for the use of the school district or districts and, if there is an excess *state enhanced* education tax payment due pursuant to RSA 198:46, directing them to assess the amount of the excess payment and pay it to the department of revenue administration for deposit in the education trust fund. Such sums shall be assessed at such times as may be prescribed for other taxes assessed by such selectmen or assessors of the municipality.

III. Municipalities are authorized to assess local property taxes necessary to fund school district appropriations not funded by the *state enhanced* education [~~property~~] tax, by distributions from the education trust fund under RSA 198:39, or by other revenue sources.

76:9 Commissioner's Report. The commissioner of revenue administration shall report to the governor, the speaker of the house of representatives, the president of the senate, and the commissioner of education each year on or before October 1, a statement of the *state enhanced* education [~~property~~] tax warrants to be issued for the tax year commencing April 1 of the succeeding year.

5 Utility Property Tax; Exemption. Amend RSA 83-F:9 to read as follows:

83-F:9 Exemption From State *Enhanced* Education [~~Property~~] Tax. Persons and property subject to taxation under this chapter shall not be

subject to tax under RSA 76:3; provided, however, that nothing in this chapter shall be construed to exempt such persons or property from local school, municipal, district, or county taxation under RSA 76.

6 School Money; Education Trust Fund. Amend the introductory paragraph of RSA 198:39, I to read as follows:

I. The state treasurer shall establish an education trust fund in the treasury. Moneys in such fund shall not be used for any purpose other than to distribute adequate education grants to municipalities' school districts pursuant to RSA 198:42, and to provide *state enhanced* education [~~property~~] tax hardship relief under RSA 198:55. The state treasurer shall deposit into this fund immediately upon receipt:

7 School Money; Education Trust Fund. Amend RSA 198:39, I(g) to read as follows:

(g) The full amount of excess *state enhanced* education [~~property~~] tax payments from the department of revenue administration pursuant to RSA 198:46.

8 State Aid for Educational Adequacy; Definitions. RSA 198:38 is repealed and reenacted to read as follows:

198:38 Definitions. In this subdivision:

I. "Municipality" means a city, town, or unincorporated place.

II. "School district" means school district as defined in RSA 194:1 or RSA 195:1.

III. "Elementary school" means a school with any of the grades kindergarten through 8.

IV. "High school" means a school with any of the grades 9 through 12.

V. "Department" means the department of education.

VI. "Educationally disabled child" or "educationally disabled pupil" means an educationally disabled child as defined in RSA 186-C:2, I.

VII. "Average daily membership in attendance" means average daily membership in attendance as defined in RSA 189:1-d, III.

VIII. "Average daily membership in residence" and "resident pupils" mean the average daily membership in residence as defined in RSA 189:1-d, IV, except that no kindergarten pupil shall count as more than 1/2 day attendance per calendar day. Children who are home schooled pursuant to a home education program approved by the department in accordance with RSA 193-A shall not be included in this definition.

IX. "Transportation cost" means the cost of transporting pupils in grades kindergarten through grade 8 to and from school as reported by school districts on the DOE-25 form.

X. "Free or reduced-price meal" means the number of pupils in a school district in grades 1 through 12 who are eligible to receive a free or reduced-priced meal shall be calculated by multiplying each municipality's elementary average daily membership in residence by the percentage of elementary pupils eligible to receive a free or reduced-price meal in the district of residence.

9 State Aid for Educational Adequacy; Local Equalization Aid; Per Pupil Valuation. RSA 198:40 is repealed and reenacted to read as follows:

198:40 Local Equalization Aid. Beginning July 1, 2004, and every fiscal year thereafter, local equalization aid shall be calculated by the department as follows:

I. The total statewide equalized valuation of all municipalities including utilities, as determined by the department of revenue administration, shall be divided by the total statewide average daily membership in residence. The result shall be the statewide average equalized valuation per pupil.

II. The equalized valuation of all property in a municipality including utilities, as determined by the department of revenue administration, shall be divided by the average daily membership in residence in the municipality. The result shall be the local equalized valuation per pupil.

III. Eligibility for local equalization aid under this paragraph shall be determined as follows:

(a) If a municipality's local equalized valuation per pupil as calculated in paragraph II is equal to, or greater than, the statewide average equalized valuation per pupil as calculated in paragraph I, no local equalization aid shall be available.

(b) If a municipality's local equalized valuation per pupil as calculated in paragraph II is less than the statewide average equalized valuation per pupil as calculated in paragraph I, the municipality shall be entitled to receive local equalization aid in an amount equal to the following: subtract the local equalized valuation per pupil as calculated in paragraph II from the statewide average equalized valuation per pupil as calculated in paragraph I. This amount shall be multiplied by the average local education tax rate imposed statewide in the fiscal year in which this calculation is made, and the product shall be divided by 1,000. The result shall be multiplied by the average daily membership in residence in such municipality and shall be available to a municipality as local equalization aid.

10 New Sections; Targeted Per Pupil Aid; State Enhanced Education Aid. Amend RSA 198 by inserting after section 40 the following new sections:

198:40-a Targeted Per Pupil Aid.

I. A municipality with a local equalized valuation per pupil as calculated in RSA 198:40, II, which is less than or equal to 200 percent of the statewide average equalized valuation per pupil, as calculated in RSA 198:40, I, shall be eligible to receive targeted per pupil aid for such municipality's educationally disabled pupils, pupils eligible for free or reduced-price meals, English for speakers of other languages, and for such municipality's transportation costs which shall be determined by multiplying the statewide average equalized valuation per pupil, as calculated in RSA 198:40, I, by the average local education tax rate imposed statewide in the fiscal year in which this calculation is made. The product shall be divided by 1,000 resulting in a per pupil amount which shall be available to a municipality as follows:

(a) The per pupil amount calculated in paragraph I shall be multiplied by the average daily membership in residence of educationally disabled pupils in the municipality. This amount shall be available as targeted aid for educationally disabled pupils in the municipality.

(b) The per pupil amount calculated in paragraph I shall be multiplied by the average daily membership in residence eligible to receive a free or reduced-price meal in kindergarten through grade 12 in the school district. This amount shall be available as targeted aid for pupils eligible to receive a free or reduced-price meal in the municipality.

(c) The per pupil amount calculated in paragraph I shall be multiplied by the average daily membership in attendance receiving English for speakers of other languages services in the municipality. This amount shall be available as targeted aid for pupils in the municipality receiving English for speakers of other languages. In this subparagraph "average daily membership in attendance" shall be as defined in RSA 189:1-d, III.

(d) A municipality eligible to receive targeted per pupil aid under this paragraph shall also receive 100 percent of transportation costs in such municipality.

II. A municipality with a local equalized valuation per pupil, as calculated in RSA 198:40, II, which is greater than 200 percent of the statewide average equalized valuation per pupil as calculated in RSA 198:40, I shall not receive targeted per pupil aid under this section.

198:40-b State Enhanced Education Aid. Beginning July 1, 2005, and every fiscal year thereafter, state enhanced education aid shall be calculated by the department as follows:

I. Divide the total statewide equalized valuation of all municipalities excluding utilities, as determined by the department of revenue administration, by the total statewide average daily membership in residence. The result shall be the statewide average equalized valuation per pupil.

II. Divide the equalized valuation of all property in a municipality excluding utilities, as determined by the department of revenue administration, by the average daily membership in residence in the municipality. Multiply the result by the state enhanced education tax rate imposed in the fiscal year in which this calculation is made, and divide the product by 1,000. The result shall be the local equalized valuation per pupil.

III. Eligibility for state enhanced education aid under this paragraph shall be determined as follows:

(a) If a municipality's local equalized valuation per pupil as calculated in paragraph II is greater than or equal to the statewide average equalized valuation per pupil as calculated in paragraph I, no state enhanced aid shall be available.

(b) If a municipality's local equalized valuation per pupil as calculated in paragraph II is less than the statewide average equalized valuation per pupil as calculated in paragraph I, the municipality shall be entitled to receive state enhanced education aid in an amount equal to the following: subtract the local equalized valuation per pupil as calculated in paragraph II from the statewide average equalized valuation per pupil as calculated in paragraph I. This amount shall be multiplied by the state enhanced education tax imposed statewide in the fiscal year in which this calculation is made, and the product shall be divided by 1,000. The result shall be multiplied by the average daily membership in residence in such municipality and shall be available to a municipality as state enhanced education aid.

IV.(a) In any fiscal year, if the amount raised by the state enhanced education property tax in any municipality, except an unincorporated place or a town with an average daily membership in residence of one or less, exceeds the amount necessary to fund all local education costs as determined in such municipality's duly adopted school district budget, the excess shall be remitted to the department of revenue administration on or before March 15 of the tax year in which the excess occurs.

(b) The amount of such excess to be remitted shall not include any income derived from the investment of funds by the municipal treasurers under RSA 41:29 and RSA 48:16. Any funds remaining after full payment of the excess tax required in paragraph I shall become available for unrestricted use by the municipality.

(c) The commissioner of the department of revenue administration shall collect from the municipality the excess tax and pay the excess tax over to the state treasurer for deposit in the education trust fund established in RSA 198:39.

(d) The commissioner of the department of revenue administration shall calculate the excess amount owed by each municipality pursuant to paragraph I.

V. In any fiscal year, a municipality shall appropriate all state enhanced education aid funds received under this section to pay for local education costs before raising any additional local education tax revenues locally.

198:40-c Total State Aid for Education.

I. Beginning July 1, 2004, and every fiscal year thereafter, the total state aid for education shall be determined as follows:

(a) The sum total of all local equalization aid as calculated under RSA 198:40 paid to all municipalities statewide; plus

(b) The sum total of all targeted aid as calculated under RSA 198:40-a paid to all municipalities statewide; plus

(c) The sum total of all state enhanced education aid as calculated under RSA 198:40-b.

II. In each fiscal year, the total aid calculated in paragraph I shall be adjusted by adding the average annual rate of inflation, as measured by the most recent available northeast region consumer price index for all urban consumers as published by the Bureau of Labor Statistics, United States Department of Labor. The resulting sum, expressed as a percentage, shall be added to 100 percent to yield an adjustment factor. The total state aid for education from the immediately preceding year shall be multiplied by the adjustment factor and the product shall be the adjusted total state aid for education.

III. In each fiscal year, the commissioner of the department of revenue administration shall determine, to the nearest cent, the state enhanced education tax rate that will match, as nearly as possible without exceeding, the amount raised statewide by the state enhanced education tax in fiscal year 2005.

IV. In any fiscal year in which the total state aid for education as calculated under this section would exceed the total state aid for education distributed to municipalities in the immediately preceding fiscal year as adjusted pursuant to paragraph II of this section, the total state aid for education shall be reduced to the amount distributed to municipalities in the immediately preceding fiscal year, as adjusted pursuant to paragraph II of this section, and the amount of the excess shall be deducted from each municipality's total state aid on a pro rata basis.

11 Determination of Adequate Education Grants. RSA 198:41 is repealed and reenacted to read as follows:

198:41 Determination of Adequate Education Grants.

I. Except for municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of education shall determine the amount of the adequate education grant for the municipality adding the all sums received by a municipality under RSA 198:40, RSA 198:40-a, and RSA 198:40-b, and subtracting from the sum the amount of the tax warrant issued by the commissioner of the department of revenue administration pursuant to RSA 76:9 for the next tax year.

II. For municipalities where all school districts therein provide education to all of their pupils by paying tuition to other institutions, the department of education shall determine the amount of the adequate education grant for each municipality as the lesser of the two following calculations:

(a) The amount calculated in accordance with paragraph I of this section; or

(b) The total amount paid for items of current education expense as determined by the department of education minus the amount of

the warrant to be issued by the commissioner of revenue administration for such municipality reported pursuant to RSA 76:9 for the next tax year.

12 School Money; Distribution of Adequate Education Grants. Amend RSA 198:42, II to read as follows:

II. For the fiscal year beginning July 1, 1999, and every fiscal year thereafter the amount necessary to fund the grants under RSA ~~[198:41]~~ **198:40-c** is hereby appropriated from the education trust fund created under RSA 198:39 to the department of education according to the following formula: from the amount calculated in accordance with RSA ~~[198:40, II,]~~ **198:40-c**, subtract the aggregate amount of the *state enhanced* education ~~[property]~~ tax warrants to be issued by the commissioner of revenue administration for municipalities reported pursuant to RSA 76:9 for the next tax year. The governor is authorized to draw a warrant from the education trust fund to satisfy the state's obligation under this section. Such warrant for payment shall be issued regardless of the balance of funds available in the education trust fund. If the balance in the education trust fund, after the issuance of any such warrant, is less than zero, the commissioner of the department of administrative services shall inform the fiscal committee and the governor and council of such balance. This reporting shall not in any way prohibit or delay the distribution of adequate education grants.

13 Low and Moderate Income Homeowners Property Tax Relief. Amend RSA 198:57, III(a) to read as follows:

(a) Owns a homestead or interest in a homestead subject to the *state enhanced* education ~~[property]~~ tax;

14 Low and Moderate Income Homeowners Property Tax Relief. Amend RSA 198:57, IV(c) to read as follows:

(c) Multiply the lesser of the amount determined in subparagraph (a) or (b) by the ~~[current]~~ *state enhanced* education ~~[property]~~ tax rate as shown on the tax bill under RSA 76:11-a;

15 Excess Education Property Tax Payment; Subdivision Heading Amended. Amend the subdivision heading immediately preceding RSA 198:46 to read as follows:

Excess *State Enhanced* Education ~~[Property]~~ Tax Payment

16 Excess Education Property Tax Payment. Amend RSA 198:46, I to read as follows:

I. Municipalities for which the *state enhanced* education ~~[property]~~ tax exceeds the amount necessary to fund an adequate education determined by RSA 198:40 shall assess and remit such excess amount to the department of revenue administration on or before March 15 of the tax year in which the excess occurs.

17 Excess Education Property Tax Payment; Forms. Amend RSA 198:47 to read as follows:

198:47 Forms. The commissioner shall approve and provide forms relative to the reporting and remitting of excess *state enhanced* education ~~[property]~~ tax by the municipalities.

18 Alternative Kindergarten Programs. Amend RSA 198:48-a, VII-VIII to read as follows:

VII.(a) ~~[Upon the effective date of this paragraph, and for]~~ **For** each fiscal year through June 30, 2003, an adequate education grant of \$1200 per pupil shall be distributed to school districts, from the education trust fund created in RSA 198:39, for the education of its resident kindergarten pupils enrolled in an approved alternative kindergarten program established under this section.

(b) Once pupils enrolled in an approved alternative kindergarten program have been counted in the average daily membership in residence, school districts shall receive, for each such pupil, an adequate education grant calculated in accordance with ~~[RSA 198:40 through RSA 198:42]~~ **RSA 198:41**.

VIII. Notwithstanding the provisions of this section, alternative kindergarten programs which were approved and in effect prior to April 29, 1999 may continue to operate and shall continue to receive per pupil adequate education grant amounts in accordance with RSA ~~[198:40 through RSA 198:42]~~ **198:41**.

19 School Boards, Teachers; Definitions Amended. RSA 189:1-d is repealed and reenacted to read as follows:

189:1-d Definitions. In this chapter:

I. "Attendance" means full-time participation in a program of instruction under the direction of a teacher employed by the school district. Educationally disabled home educated pupils educated at school district expense under the direction of a teacher employed by the school district shall be included.

II. "Membership" means pupils of whom attendance is expected, whether a pupil is present or absent on any given day.

III. "Average daily membership in attendance" means the aggregate half-day membership of pupils attending schools operated by a school district divided by the number of half-days of instruction offered. The average daily membership in attendance for preschool and kindergarten pupils shall be divided by the number of instructional days offered to higher level elementary grades.

IV. "Average daily membership in residence" means the average daily membership in attendance of pupils who are legal residents of the school district pursuant to RSA 193:12 or RSA 193:27, IV and are attending any public school, or who are attending any charter school or private school program approved by the department of education at the expense of the school district.

20 Procedure for Formation of Cooperative School Districts; Apportioning Operating Expenses; Exclusion of Home Education Pupils Deleted. Amend RSA 195:18, III(e) to read as follows:

(e) The method of apportioning the operating expenses of the cooperative school district among the several preexisting districts and the time and manner of payment of such shares. ~~[Home education pupils who do not receive services from the cooperative school district, except an evaluation pursuant to RSA 193-A:6, II shall not be included in the average daily membership relative to apportionment formulas.]~~

21 Procedure for Formation of Cooperative School Districts; Apportioning Capital Expenses; Exclusion of Home Education Pupils Deleted. Amend RSA 195:18, III(g) to read as follows:

(g) The method of apportioning the capital expenses of the cooperative school district among the several preexisting districts, which need not be the same as the method for apportioning operating expenses, and the time and manner of payment of such shares. Capital expenses shall include the costs of acquiring land and buildings for school purposes, including property owned by a preexisting district; the construction, furnishing, and equipping of school buildings and facilities; and the payment of the principal and interest of any indebtedness which is incurred to pay for the same or which is assumed by the cooperative school district. ~~[Home education pupils who do not receive~~



~~services from the cooperative school district, except an evaluation pursuant to RSA 193-A:6, II, shall not be included in the average daily membership relative to apportionment formulas.]~~

22 Effective Date.

I. Section 2 of this act shall take effect July 1, 2004.

II. Sections 4-7 and 11-18 of this act shall take effect July 1, 2004.

III. Section 3 of this act shall take effect July 1, 2005.

IV. RSA 198:40-b and RSA 198:40-c, I(c), as inserted by section 10 of this act shall take effect July 1, 2004.

V. The remainder of this act shall take effect July 1, 2003.

**2003-1656s**

### AMENDED ANALYSIS

This bill:

I. Reduces the education property tax rate from \$5.80 to \$4.87 for the 2004 fiscal year and to \$3.50 for the 2005 fiscal year.

II. Beginning July 1, 2005, establishes a new education funding formula for municipalities and sets forth criteria whereby municipalities may receive local equalized aid, targeted per pupil aid, and state enhanced education aid for pupils in the public schools.

III. Establishes a new procedure for determining the statewide cost of an adequate education.

SENATOR O'HEARN: Thank you Mr. President. I know that I have another bill that probably will cause another timely debate. I move HB 608 ought to pass with amendment. The amendment offered by Senator Gatsas replaces the statewide property tax with the State Enhanced Education Tax at a rate of \$3.50 per thousand starting in 2005. Before the State Enhanced Education Tax becomes effective, a stabilization plan takes place...takes effect that allows communities to produce a school budget with minimal changes to their current grant and allows the state to balance its budget as well. The plan eliminates donor towns and targets aid to the communities that have the lowest property tax base. This funding plan retains a statewide, uniform tax while providing assistance to towns that cannot pay for an adequate education on their own. The purpose of education funding should be to provide assistance to the towns that need it most, which is what this plan does. The formula factors in a town's ability to pay for an adequate education, which is key to eliminating our most property poor towns from providing assistance to some of the wealthiest towns in the state. Towns will no longer be pitted against each other in an unfair system. Cost increases for future years will be tied to a CPI, enrollment growth and property evaluation, preventing costs from sky rocketing out of control. I urge that you support the committee recommendation of ought to pass as amended and I also recommend that if you have technical questions that the author of this particular amendment can answer them best. Thank you.

SENATOR SAPARETO: Thank you Mr. President. As the first producer of uniformity property tax since the Claremont decision, back in 1997, I have seen a lot of evolution of this particular type of distribution. This is the first one, other than the one that I have written, that I can actually agree with. The basis of this is critical. Where this differs in the House, is the House has taken a different approach for every pupil. It is clearly stated by the New Hampshire Supreme Court, that every...the cost for education in one community can be different for a student than the cost for education for a student in another community. That is the basis of

this. The reason why the Claremont case came about was because we had lots of students and we had very low property values. That is what created the hardships in Senator Gallus district or my district or some of the other districts. That is what made it so difficult for these communities to provide money for education, and that is what prompted the Claremont lawsuit. For the first time ever, in all of the years of the seven years that I have been up here, we finally have a proposal that has a basis of valuation per student, which is the fundamental basis of distribution in this plan. That has never existed before in the state. That is how we make education affordable for every student across this state, regardless of the property value and number of the students. One of the towns in my district has 8,200 kids in it. That is a lot of kids. No matter what, we spend very low amounts per student in my district, yet the property tax rates are sky high, as they are also up in the north country in certain areas. This is the first time that now we can give these communities an ability to raise money for education. Again, this never existed before. All these other plans that we have seen with distribution, either number one, try to eliminate the towns with the lowest tax rates, so they don't have to send their money to Concord or they were designed to specifically placate communities to get votes for passage. I can't tell you the number of times that I have heard, over in the other chamber, "oh that will never pass. We can't support that cause it will never fly." Well finally, we got something that will fly, that is the right way to do things. It has taken seven years to finally get this about. I commend my colleague, Senator Gatsas, for presenting this plan and putting this together. He did the basis of equalized valuation per pupil a little differently than I would have, but it is still the same result. The communities that need it get it. Have I compromised a bit? Yes, because there is less money in the distribution than we are seeing under current law, yes. But, it goes to the core and the heart of Claremont. It goes to the core of raising money for education. Along with this, some of the other Senators and myself, plan on offering...producing a circuit breaker that we would like to see introduced into Finance. All of these things together make for a very solid education package that maybe we won't have to keep revisiting every year in this chamber. So I would strongly urge all of my colleagues to give their support for HB 608 as amended. Thank you.

SENATOR BELOW: Thank you Mr. President. I rise with, I guess, reluctant support of this committee amendment. I would say that neither 608 as passed by the House, nor the committee amendment represent my preference for good long-term constitutional solution, but I think that on net, the so-called Gatsas plan is an improvement over what the House sent us, so that is why I am going to vote for this amendment. It does have some elements that I think are useful elements. The use of the equalized value per pupil is a good element to move towards some equalization in equity in tax burdens. The three components of targeting based on pupil need for free and reduced lunch, for special education and English as a second language, are also, I think, good elements for targeting. I like to play with spreadsheets and did some analysis of the plans in the House and I found that the so-called Hess plan, the HB 608 as sent by the House, had some very odd results, in that for three of the plaintiff districts, Claremont, Pittsfield and Franklin, there was actually going to be a net increase in the total tax burden compared to current law. Compared to even the statewide property tax at \$5.60, which really made no sense. It showed how ineffective it was at targeting based on either...based on need. The Gatsas plan particularly, in its second year, when it is fully imple-

mented does not have that effect, and for all five plaintiff districts in fiscal year 2005 other significant reductions in property taxes compared to current law. In a couple of them, quite significant. So I think that does represent an improvement over what the House sent us. Thank you Mr. President.

SENATOR PRESCOTT: Thank you Mr. President. I rise in support of this bill and I, too, wanted to say thank you very much Senator Gatsas. I campaigned on the bill that would come out of this Senate that would do a number of things. One, it would help balance the budget, and not just this budget, but future budgets. This is going to be a long-term solution as I see it. Two, could be that we wanted to eliminate the donor towns. I would be so much in favor of eliminating the statewide property tax, however, we do want to meet constitutionality. That is the third thing that this does. It meets constitutionality. It does get rid of donor towns and does that as well. Another thing that I wanted to say to the people that are in my district is, as I said when I campaigned for this seat, I would like to get the money where it is really needed. If you don't get your money and maybe because somebody else needs it more. This is a hard choice for a Senator to make. I understand that. I commend those who will be voting for this because it is solid ground that we are standing on. We are standing on empirical values that state the exact needs of the states education needs per town and getting the money where it is needed. In fact, in my districts, Newton, Newmarket, are the neediest towns in my district. They are getting more money. Yes Senator Larsen, some towns may be getting less money in my district, but I implore you and I implore my district and the people of New Hampshire, to look at the big picture on this bill. The big picture is everyone wants to provide education dollars where they are needed. The big picture is everybody realizes that if I wasn't expecting to get the money, and I wasn't expecting to use the money on education, and yet I got money, do I still need it? And do I want the solution? I believe that this bill does that. It does a lot of things that we can all be proud of, and yes, some towns are going to have to step up and say, you know, the needier towns need the money more than my town. I pray that New Hampshire rises to this occasion because it is the honorable thing to do. I am so proud to be a part of this Senate if it passes this bill. Thank you very much Mr. President.

SENATOR GATSAS: Thank you Mr. President. Let me first start by how this whole process started. Two years ago when I came to the Senate, I had the privilege of being put on the adequacy commission. I sat with then Representative Clegg, now Senator Clegg. Senator Larsen, Senator Estabrook, then Representative Estabrook. Senator Johnson, Representative Henderson, Senator McCarley, Representative Kurk and Representative Hess, and the Chairman, Senator O'Hearn. I walked in and I looked in the room and I said, "gee the rumor is that these are the brightest and best minds in the state of New Hampshire", and I am talking about education, and I have to commend them, they were. They were some of the best minds in the state talking about education. I sat there and I listened for, I don't know, it must have been three weeks. They were talking about education funding formulas. They were talking about various things. I made the mistake by saying to Senator O'Hearn, "can I have some information so that I can at least understand what everybody's saying" because they were using ADMR, ADMA and all of these words. I was sitting there saying, gee, what does that really mean? So Senator O'Hearn

was so gracious to give me enough material that I took the time to read it. Then I learned, as we went through the adequacy commission, the pride of authorship. It is something that is incredible up here. It took us, as we were writing a piece of legislation, that was supposed to be corrected in its own way. It took us three sessions to deal with two sentences. That is when I understood that if you were going to undertake rewriting a complete education plan that was the fairest and most equitable for the state of New Hampshire, that it would be a major undertaking. So I thank my colleagues for putting my name on this amendment, but it really isn't mine. I look around the room and it is a lot of people in here. Senator Prescott started it with a plan that started talking about a ten dollar rate and reducing it over five years. Senator Sapareto had his plan and he was talking about evaluation. We have a current plan that talked about spending special education, free and reduced lunch and transportation. Senator Gordon brought a plan through two years ago, talking about the market basket approach, which Senator Peterson brought forward this year. Senator Gordon's approach, when I first sat down and looked at it, sounded like it made sense to me. We started putting numbers together and you looked at it, and it made sense except it capped numbers. You always had numbers within the formula that everybody wanted to tinker with. My understanding of the way that the formula was set up when it first started here, we had a number in mind. We were going to spend \$825 million on education and we were going to build from that formula. I thought that was wrong. You have heard a lot of conversation of winners and losers. I invite anybody to sit down with anybody and say to them, that a community that gets \$1.9 million today, in the plan that I am proposing, in a community that is wealthy and can raise its own local property taxes, but we are giving them \$4.4 million. I think that everything that I have heard here for three years, we have talked about getting money to the neediest communities. Getting rid of the donor towns, pitting the haves against the have-nots, and taking those communities that have the availability to raise the money locally, letting them do it and educating their children. So I sat down and I looked at everything that we had in front of us and I started with a little hand calculator. No spreadsheets. No doctorate. Just started punching in numbers. We started out with different rates and kept throwing them away, and this started probably about eight months ago. I can tell you that it is frustrating. You can play with it for two weeks and then you get rid of it, and then in earnest in January, I started and I didn't stop. I looked and tried to formulate something that was the fairest and most equitable position for the entire state. Didn't build a formula with any one community in mind. Started the formula based on the number of children that we have in the state of New Hampshire that go to school. That was the first column. The next column that everybody has talked about around here is evaluation. What the ability of each community is to raise their own local property taxes. Allenstown, Pittsfield, Claremont, Franklin, Berlin, they have a very, very difficult time, and we should get them aid. But should we get them almost the same amount of aid as we give Bedford, Amherst, Bow, and those communities? I think not. I think you, as my colleagues here, would have to agree with me, that we shouldn't be giving the same amount of aid. Sure, do the Portsmouth's of the world get a little aggravated that they're sending money to this state and we are distributing funds to some of those communities that can afford to raise it themselves? Absolutely, and I can't blame them. So the next thing that I did in the formula said, okay,

I guess we need to take a look and see what the locals are spending on education after they get their grants from the state and try to develop some sort of base cost that we can all understand. Taking the equalized evaluation per student in the state and applying an assumption of what the local communities are paying at a rate of tax per child, to give us a base cost. We have the ability to look to fund charter schools based on a based cost because we use that same base cost to distribute it to special education, free and reduced lunch and ESL in my formula. So that ability is there and we don't stop growth. The formula grows by the increase in student enrollment and evaluation. Then it was, how do we present a property tax that was reasonable, that we could distribute equally to each community based on their evaluation. My first choice was \$3.80. I happened to meet with somebody and they said, "gee, you should use \$3.50. That was the statewide property tax that was in place since 1919 and was repealed in 1996." I said, that sounds good and we can try that. So we put that in and that is how we removed the donor towns. Somebody suggested that we should change the enhanced education tax to the state enhanced education tax. I did that. So as we go forward, we have removed all of the donor towns and have given them the ability to raise the money locally, hold onto it locally and not spend it on anything else but education first. If they can't spend the entire amount of the \$3.50 they must send it back to the state. If we look at the funding formula that we had for 2002, there would be four communities that if they could spend no more money on education, that would have to send money back to the state, and that would be roughly \$2 million. That is a far cry of the \$37 million that is coming back now. So I can look at everyone of you and say thank you because everyone of you participated in the evolution of this legislation, because the changes that came forward, I attempted to make for everybody. So this is not the Gatsas plan, this is for all of the people that participated in this legislation that got me started in the Adequacy Commission and got me going forward. I looked at the formula that we had when we first started constructing the base cost we had 37 schools. Two years later we are at seven, with two of those schools making up 80 percent of the number. That is wrong. I know that Senator Foster says that you can never talk about this over a cup of coffee at Dunkin Donuts, it is a box of Joe. After we stared this morning, I was going to bring in about 200 gallons of Joe, because I figured that we would be here until midnight. I can tell you all that during the course of this whole time, I have never looked to have the pride of authorship on this bill. I have allowed anybody that wanted to come onto the bill as amended. I offered it to both sides of the aisle. I offered it to everybody in the Senate. I hope today we find a way that we can pass this along and have everybody approving a funding education plan that works for the state of New Hampshire. It is fair and it is equitable. Thank you.

SENATOR BOYCE: I rise simply to point out some things that I don't like about this plan. I don't see them as fatal flaws. The first of which is the purpose for doing this at all which is again, as we have in years past, to try and jump through hoops set by the court for reasons that they had beyond their legislative...their judicial authority, legislating from the bench. That is my first problem with it, the point that we are doing this, simply because the court overstepped their authority and told us that we had to do this. Second: I suppose I should be in favor of this wholeheartedly because one of the things that I said from the very beginning of this whole process is that we should not have a statewide

property tax. I see that by a stroke of a pen, the property tax were moved. It is now an Enhanced Education Tax as applied to property, so I guess it is still a property tax. I don't like it because it has the statewide property tax in it. I am concerned that some of the targeting methods and what was included to be in the targeting may have driven...may have been driven by who would get money under the targeting and who would not lose money under the targeting. I am concerned that that is one of the problems in it. Overall, I believe this improves on what is the current law and since I doubt that this will fail, and I doubt that we will ever get a chance to vote on the underlying bill, which is what I would prefer to vote for, I will be voting for this amendment. Thank you.

SENATOR D'ALLESANDRO: Thank you Mr. President. I would just like to make a few comments about the amendment that I think enhanced the piece of legislation. In all of the time that I have been here, there has been attempt to do something for education. This started a long time ago. We took some very small steps and then took some very giant steps over the last six years. There has been an evolution in New Hampshire and that evolution has taken place basically in the urban areas, and under the targeted situation in this formula, that evolution is addressed by the introduction of English as a second language students to this environment. Those students have come to the city, they have come to Nashua, they have come to Manchester, some to Concord and some to other areas. English as a second language students was not recognized in the original education formula because they hadn't surfaced from the data that we had was not available, and what was available was really a very limited value. So the English as a second language component, I think, is a very significant one, as we in the city of Manchester, and I am sure the city of Nashua are spending millions of dollars to work on these students, to bring their English proficiency up. I also think that the free and reduced lunch aspect is a very significant part of the formula and that has been carried on and I applaud that. I think that the critical part of the education funding is one that we haven't addressed and some day we will address, and that is getting this money down to the local school that actually needs that aid. We haven't been able to clearly define that, but there are certain schools that require this. For example, in the city of Manchester, we have some inner city schools that have an 80 percent free and reduced price lunch student enrollment. We know that their poverty is at an extremely high level. Now we understand, in giving the money back to the municipalities, the cities and towns, they distribute the money, they distribute equitable. But in terms of really focusing in on it, those institutions with the demonstrated need, there has to be another tweak in this methodology someday that gets the money to those schools that really manifest the need. We know that in areas of our city that we have some highly successful schools and some that aren't. The demography of those students is very, very different. This goes along the path to try and achieve that. I think the next step is how we get to that other level. That to me, is the really critical issue because until we can find that methodology, those schools still aren't going to get the kind of aid that they need. Thank you Mr. President.

SENATOR LARSEN: I rise to commend the bill sponsor for his hard work and his openness in working through these formulas. He did join us on the Adequacy Commission and was a quick learner. I commend him for that. I do believe that this amendment is an improvement over what the House sent us in terms of an educational funding plan. But the real is-

sue is how much are we going to fund education in this state? This bill, as amended, and as I assume this group will pass today, takes \$75 million...\$75.9 million out of the formula. We could lower the statewide property tax to \$4.92, keep the current funding formula and continue to provide property tax relief to the people of this state. We are choosing instead, to balance our budget by tapping money out of our education funding program \$75.9 million. Almost \$80 million taken out of our current formula. Even if we reduced our statewide property tax to what we all know it needs to come down to, given the rise in evaluations, compared to the Education Committees plan in 2005, we sap another \$168 million out of the education funding formula for the state. I understand that we need to balance our budget, but I also understand the need of local property taxpayers who are going to have to make up the difference. If you look at a plan which would simply reduce the statewide property tax and keep our current funding formula, you look at Allentown. Allentown loses almost \$300,000 under the HB 608 amendment you are looking at. Look at Claremont. Claremont loses \$895,000 and in 2005, \$800,009 compared to simply reducing the statewide property tax and keeping the current formula. Those are the comparisons that we need to make. While we will be balancing our state budget, we will be causing an unbalance in local property taxpayers budgets across the state. I urge you to consider that. For that reason, while I commend the bills sponsor and all the hard work that went into this, I cannot support the amendment to HB 608. I would simply add that in Concord alone, it is a \$2.2 million difference in 2004 and a \$5.5 million difference in 2005. I cannot support that. I will not be voting for this amendment.

SENATOR GATSAS: Senator Larsen, of that \$5.5 million reduction, how much of that is donor community money?

SENATOR LARSEN: The \$5.5 million from Concord?

SENATOR GATSAS: Yes.

SENATOR LARSEN: I am not capable of doing that calculation in my head, but what I can tell you is that when we established a statewide property tax, which I did not agree with, but it is at least a uniform tax across the state. We established an expectation that people would share in the common good of supporting education in this state. We are a state that focuses on funding our education through decisions made in these legislative halls to fund it through the property tax. That property tax, statewide property tax has gone to fund communities like Concord, that have covered a heavy burden over the years. We have equalized and made more uniform through the statewide property tax. At least it is a flat rate for funding education and it meets constitutional standards. So Concord, yes, receives some monies from donor towns.

SENATOR GATSAS: Senator Larsen, I am looking at this analysis that you presented as you were using some of your quotes. I look at 2005 because the 2004 one is the stabilization sheet, so let's look at 2005. I believe that you said that we are spending less money as a state on education. If the \$41 million is donor town money, and if we subtract that from the \$477 million that we are sending, the state is spending just about the same in either one of these formulas because the balance of that \$41 million comes from other communities other than this **TAPE INAUDIBLE**. Would you agree with that?

SENATOR LARSEN: I will let Senator Below answer the details, but I can...

SENATOR GATSAS: I will accept that, Senator Below...

SENATOR LARSEN: I had head shaking on that, I think that it is more appropriate that he answer. I do believe that we had a statewide property tax that was equal and uniform throughout the state and there were communities in fact, who were spending \$1.60 per thousand to fund their education plans and we have brought everyone up to the same amount through the statewide property tax. I don't believe that is the appropriate way to do it, but that is the way that we have done it and...

SENATOR GATSAS: Would you suggest that the \$3.50 state enhanced education tax is not uniform?

SENATOR LARSEN: That is uniform. What results is the difference in effort across the state.

SENATOR PRESCOTT: Thank you Mr. President. Senator Larsen, when you show your comparisons of one plan to another, do you account that sometimes, plans that are out there, forecast money being spent on towns that go beyond their per capita rate of how many students are in their town and go beyond inflation rate, and go by a formula that really doesn't get money where it is needed, and therefore they do get more money, but do they need more money for that school district?

SENATOR LARSEN: Well as I tried to analyze the school districts which I pointed out, Allentown and Claremont alone, need more funding than our...than they will receive, and they would in fact be receiving more money if we kept the formula as it is, and lowered the statewide property tax.

SENATOR PRESCOTT: Then are you fully understanding the bill before us today, would allow those towns to receive money as their number of students increases in the town, as also as inflation occurs, they do get more money to commensurate with that? Are you familiar with that part of this bill?

SENATOR LARSEN: I think that you have to look at more money compared to what? They may receive more money, but they don't receive what they would have if we didn't change the law to reduce...to balance our state budget.

SENATOR PRESCOTT: And would you believe that I believe, that more money is according to need and toward a failed system that we have today?

SENATOR LARSEN: I believe you believe that.

SENATOR GREEN: Senator Gatsas, would you explain please, the issue that I think is getting confused about how we are going to pay for education in this plan as it relates to the grant and as it relates to the tax rate at the local level?

SENATOR GATSAS: Senator, that started...that is really where the plan started. Right now in the state of New Hampshire, we are spending about \$411 million. We are not by any stretch of the imagination, for one second, balancing the budget on this education funding plan. Not for one second. We are spending more money in 2005 with this plan than we do with the current plan. Those are net dollars that you have to look at. Not gross, because the gross dollars come from the donor communities. So we are either going to stop pitting the haves against the have-nots, because we will continue to be here. When somebody tells me that Claremont is losing more money in this plan, I say, the current funding formula for



2003 at \$5.80, they get \$7.7 million. In this funding formula they get \$8.02 million with a property tax at \$3.50. Now they don't lose money with that formula. I don't consider...I think the biggest problem with this formula is trying to get people to disassociate themselves with the current formula. If you can sit there and say that we have found a new way to distribute money, money goes based on targeting to the poorest communities, there is nobody in this room that can't agree that this is the best way to distribute funds. We don't sit there and say, "oh we got a mistake, we got a discount" or "oh, we got a mistake we got to go 20 percent more for a high school student." This formula is pure from beginning to end. There is no alternation in numbers. We didn't stop the funding because we were looking to reduce what we were spending in the state, we are spending more money, \$436 million as a state, from the state's general fund right now. If you want to call it general fund enhanced education trust funds. Does that answer your question, Senator?

SENATOR SAPARETO: Thank you Mr. President. Senator Larsen, would you believe that the answer to Senator Gatsas question is less than one percent? But in addition to that, I think that it is important for the public to understand that we are looking at a 93 cent reduction in the rate, and if the grant is also reduced, it could cause the local rate to rise less than 93 cents, then the average taxpayer is actually paying less money, so it is important to look at both of these aspects when we talk about reductions in grants, because we have to correlate that with the rates, would you believe? Thank you.

SENATOR BARNES: Thank you Mr. President. Senator Gatsas, there has been a lot of conversation about a couple of communities, Allentown and Claremont. As you and we all know, there are five communities that are plaintiff communities. I wish that you would take each one of those, for the record, and tell us what each of those towns...what the affect of each of those towns are, so that once and for all, the press who is taking this down in those five towns, will know what is happening to them? I would appreciate that.

SENATOR GATSAS: Thank you Senator Barnes. The community of Allentown would get an increased grant of \$786,000 with the statewide property tax reduction of \$1.37 to \$3.50. You are paying net effect on their local tax rate of a reduction of \$4.23. The community of Claremont receives \$821,000 additional and a reduction of their local property tax of \$1.49. Franklin: Franklin receives an additional \$1.4 million with a property tax reduction of \$4.22. Pittsfield. I guess we should stop at Newport first. No? Yes? The community of Lisbon receives \$316,000 more with a local property tax rate reduction of \$4.52. The community of Pittsfield receives an additional \$1.3 million with a property tax reduction of \$8.39. I think that does it.

SENATOR BARNES: Senator Gatsas, I heard Senator Larsen giving different numbers of Claremont and Allentown. Can you explain to us why there is a discrepancy in what you have just said and what she has just said concerning Claremont and Allentown?

SENATOR GATSAS: I would defer that question to her, because I don't know where she has gotten her numbers from.

SENATOR BARNES: That is an acceptable answer. I would like to ask Senator Larsen a question. Maybe we can get this cleared up once and for all.

SENATOR LARSEN: The figures that I have are the analysis between current law. The law, if we were to lower the statewide property tax of \$4.92 and the Gatsas/Education Committee amendment. The current law, if we were to reduce the statewide property tax for Allentown, produces \$4,590,921 in state aid to education to Allentown. Compare that to the Education Committee amendment which sends to Allentown, \$3,760,659 the difference is \$299,000. If my numbers are wrong, I would like to understand from Senator Gatsas how he sees that those are incorrect?

SENATOR GATSAS: Thank you Senator Larsen. You are absolutely correct. In 2004 that number is absolutely true, but I think that we should go three more columns so that we can look at what the analysis for the Below/Estabrook and Larsen amendment mean. In Allentown, under your formula, they receive \$4.1 million. Under the Education Committee amendment, they receive \$4.3 million. Under the Education Committee amendment, they receive \$284,000 more and a property reduction of another \$1.22 over and above what you give them. So would you say they are winners or losers according to the committee amendment?

SENATOR LARSEN: I am not sure that Allentown is the best example, but perhaps we could go to Claremont which has **TAPE INAUDIBLE** in 2005 a \$800,000 loss as compared to lowering the statewide property tax rate in 2005 said \$4.72.

SENATOR GATSAS: That is still a reduction of \$1.22 on the tax, Senator. I can't tell you what their equalized evaluation is, so I would guess that the number that you are probably quoting from when you are using \$4.22 and allocating funding, you need to allocate that same funding if you are going to do this formula and increase the dollars received by the community if they are going to increase their amount of taxation.

SENATOR LARSEN: And when the statewide property tax goes down in a community, does that mean that they can then save that money and not have to spend it in their schools or do they just have to rename it a local property tax and keep raising the funds that they need?

SENATOR GATSAS: I think that is a great question, because when you go to McDonalds, and Senator Barnes is gone so we can use McDonalds. When you go to McDonalds and you get a big Mac and they tell you that it is \$2.95, does it matter whether you take it out of the right pocket of your jacket or your left, it doesn't change the cost of that big Mac does it?

SENATOR LARSEN: No, but it shifts it onto the local property taxpayer instead of the state, and the local property taxpayer oftentimes has less in their pocket, so schools get cut. I can't do McDonalds anywhere sorry.

SENATOR GATSAS: God knows I shouldn't either. But are you saying that the property taxpayer when they get their tax bill, and they look at it...and on one side it says local 2000 and then next column says state 2000, that they say, okay, I can pay the local side, but boy am I mad at the state side, I don't think that I am going to pay that one?

SENATOR LARSEN: No, they cannot say that, but they can say, boy am I mad at my local school board because they had to raise the local school property tax rate, and I am going to go in there and tell them to stop raising their local property tax rate when in fact, it is the state who is not submitting enough support.

SENATOR GATSAS: Senator, about an hour ago, I think that I heard you, and I can't give you a quote, but weren't you talking about charter schools and local control?

SENATOR LARSEN: Yes.

SENATOR GATSAS: Don't you think that it should be local control on this issue also?

SENATOR LARSEN: I have been at the city council level and that is what made me run for the state Senate, which was that they told us that we had local control, but local control with no money is not local control, it is a false promise.

SENATOR FOSTER: Thank you Mr. President. Senator Gatsas, would you yield to a question?

SENATOR GATSAS: I certainly will.

SENATOR FOSTER: And to have a cup of coffee.

SENATOR GATSAS: Not a big one though.

SENATOR FOSTER: Not a big one.

SENATOR GATSAS: It is going to be a short question then.

SENATOR FOSTER: I am looking at section 198:40-b of the bill and it talks about total state aid for education and it goes through an adding up, I think, the three key aspects of aid and then it puts in a CPI cap. Why did you feel that a CPI cap was necessary, and if I can ask a two-part question? Why was it necessary, and did you run your spreadsheet without that CPI cap in there?

SENATOR GATSAS: The spreadsheets, I think that you received them all, that go up to 2009. The spreadsheets show increased in student count, show increase in evaluation. They showed an increase in local spending, and it showed a CPI cap on the amount of spending at the state level. Originally it was a cap based on the total spending, but that included the property tax, the state enhanced education tax which would have comprised of \$436 plus the \$363 to get us closer to the \$800. What that did was it meant that we were increasing the property tax when evaluations could be going up and that tax should be coming down. So my belief was that we should increase spending at the state level, actual state dollars being spent on education should go up. We shouldn't arbitrarily increase a tax even though evaluations may be going up.

SENATOR FOSTER: I am not sure that I got the answer to my question. Is in your formula, you said that you were just using the numbers and these are kind of the results that we get, but you put a CPI cap in. I guess that I am thinking about the circumstances that this has been the fastest growing state in New England for some time, and if we continue to attract a great population, you would think that total spending could actually rise at a rate much faster than CPI. So was there a need to cap state spending, regardless of the growth in this state? Is that why we have it in there or why did you put it in the bill?

SENATOR GATSAS: Again, that comes from the Adequacy Commission that I sat on. In that Adequacy Commission, that bill came out with capping using CPI as a cap. That is why it is there. So with the rest of my colleagues that took us three sessions to draft up that wording for technical corrections bill, that is where that came from.

SENATOR FOSTER: Thank you.

SENATOR BOYCE: Thank you Mr. President. Senator Gatsas, I just wanted to clarify just in the order of making sure that there are no false promises out there. When you were talking earlier about the reduction

of local property tax as a result of your plan, you know, a \$1.42 here and those reductions are all assuming that the local school board and the voters that set the budget for that local school, don't choose to spend more. If they increase their spending a lot, their local property taxes will not be reduced as much, simply because they decided to spend more money. So if those reductions don't happen, it is not because the state plan didn't work, it was because the locals wanted to spend more money?

SENATOR GATSAS: That is correct.

SENATOR COHEN: Just very briefly. Obviously a lot of questions remain about this, in regard to eliminating the property tax, targeting aid, the haves and have nots, as we all know. It was in the so-called have towns that there are an awful lot of have-not people within those have towns. And just as obviously as there are a lot of questions about this that remain, it is just as obvious that this is going to move forward, that the support is there, for moving this to the Finance Committee. I would just like to offer that as we do this, and a couple of bills that we are going to be moving to HB 717. I would ask my colleagues to send that forward as well so that the Finance Committee can have another thing to look at which will address some of these other problems. Thank you.

SENATOR KENNEY: Thank you Mr. President. It seems to be on the firing line right now. I represent a community called Moultonborough. I guess we are the largest donor community in the state. We are sending roughly \$5.7 million in fiscal year 2003 and \$6.4 million in 2004. It has been broadcasted in the newspaper that these communities or five communities will continue to pay into this grant, and the only way for those communities really to offset that amount of money from going into this grant in the future, under this plan if it passes, would be to spend more money on education within their district, for their school districts. I just want a clarification. Is that accurate?

SENATOR GATSAS: Moultonborough right now, if they spent no more than they spend in 2002, would have to send back \$114,000 to the state. If they spent roughly anything over \$900 per child additional on education, they would send nothing back to the state. As long as it is spent on education, they don't have to send it back to the state.

SENATOR KENNEY: Thank you Mr. President. My follow up question is actually a request. I was on the phone last night with a financial officer who was involved locally with Moultonborough school district and funding some remodeling on the high school and the middle school for \$11 million. The question that came up was they are now... and they have a deficit, and each year they are paying approximately \$700 million to \$800 million on that deficit, that is a fifteen year commitment that they have to a local savings bank. The question that came up was could they in turn, if this plan were to pass, could they pay some of that deficit off through increasing school expenditures?

SENATOR GATSAS: I don't believe that this can be used for building aid or reducing debt. It needs to be spent on education, books, classroom materials, teachers and whatever they choose to spend it on.

SENATOR KENNEY: Thank you. I anticipated that I knew that answer, but I just wanted to get the answer from the architect of this plan. Thank you.

**Question is on the adoption of committee amendment.**

**A roll call was requested by Senator Sapareto.**

**Seconded by Senator Prescott.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Below, Green, Flanders, Odell, Roberge, Eaton, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Morse, Prescott.**

**The following Senators voted No: Peterson, Foster, Larsen, Estabrook, Cohen.**

**Yeas: 19 - Nays: 5**

**Amendment adopted.**

Senator Below offered a floor amendment.

Sen. Below, Dist. 5

Sen. Estabrook, Dist. 21

Sen. Larsen, Dist. 15

**May 21, 2003**

**2003-1763s**

**04/10**

### **Floor Amendment to HB 608-FN-LOCAL**

Amend the title of the bill by replacing it with the following:

AN ACT reducing the education property tax rate.

Amend the bill by replacing all after the enacting clause with the following:

1 Education Property Tax; Fiscal Year 2004 Rate Reduced. Amend RSA 76:3 to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate of [~~\$5.80~~] **\$4.92** on each \$1000 of the value of taxable property is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F.

2 Education Property Tax; Fiscal Year 2005 Rate Reduced. Amend RSA 76:3 to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate of [~~\$4.92~~] **\$4.72** on each \$1000 of the value of taxable property is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F.

3 Education Property Tax; Fiscal Year 2006 Rate Reduced. Amend RSA 76:3 to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate of [~~\$4.72~~] **\$4.52** on each \$1000 of the value of taxable property is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F.

4 Education Property Tax; Fiscal Year 2007 Rate Reduced. Amend RSA 76:3 to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate of [~~\$4.52~~] **\$4.32** on each \$1000 of the value of taxable property is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F.

5 Education Property Tax; Fiscal Year 2008 Rate Reduced. Amend RSA 76:3 to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate of [~~\$4.32~~] **\$4.12** on each \$1000 of the value of taxable prop-

erty is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F.

6 Education Property Tax; Fiscal Year 2009 Rate Reduced. Amend RSA 76:3 to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate of [~~\$4.12~~] **\$3.92** on each \$1000 of the value of taxable property is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F.

7 Effective Date.

I. Section 1 of this act shall take effect and shall apply to education property taxes due for the tax year beginning April 1, 2004.

II. Section 2 of this act shall take effect and shall apply to education property taxes due for the tax year beginning April 1, 2005.

III. Section 3 of this act shall take effect and shall apply to education property taxes due for the tax year beginning April 1, 2006.

IV. Section 4 of this act shall take effect and shall apply to education property taxes due for the tax year beginning April 1, 2007.

V. Section 5 of this act shall take effect and shall apply to education property taxes due for the tax year beginning April 1, 2008.

VI. The remainder of this act shall take effect and shall apply to education property taxes due for the tax year beginning April 1, 2009.

**2003-1763s**

### AMENDED ANALYSIS

This bill reduces the education property tax rate to \$4.92 for fiscal year 2004, and thereafter reduces the fiscal year 2004 rate by an additional 20 cents per fiscal year through fiscal year 2009.

SENATOR BELOW: Thank you Mr. President. I rise to offer a floor amendment. I would like to speak to my motion. This floor amendment is pretty simple and straightforward. I think that it offers a better, more constitutional way to fund education, I think at the state's obligation to fund education over the next biennium. What the amendment does is a complete substitution of the bill. It simply...all it does compared to current law is it lowers the education property tax rate to \$4.92 for the next fiscal year and for fiscal year 2005 to \$4.72 and has some further reductions out beyond that. Those reductions were based on the results in the House, as the best estimate of the rate that would keep the average property tax bill for the state property tax at an equal level. That was roughly the...it adjusts the rate down at roughly the same rate as the projected inflation due to appreciation of value, but not due to new construction. I do have a handout of a spreadsheet that I think Senator Gatsas and Larsen were starting to refer to, which I would like to have distributed and I would like to refer to it. I think there is a question...I would like to bring us back to recall what our constitutional obligation is here. I think a simple way to do that is to look at the Opinion of the Justices from December 7, 2000, which was at that time, all four justices on the court, Brock, Broderick, Nadeau and Dalianis. I think that they made two very simple points which summarizes, I believe, our obligation. One: well they observed that the New Hampshire Constitution imposes solely upon the state, the obligation to provide sufficient funds for every school district to furnish a constitutionally adequate education to every educable child. They also observed that no portion of that responsibility of the state to fund the costs of an adequate education for every child should be shifted

back... "the state may not shift any of this constitutional responsibility to local communities." The Part II, Article Three imposes upon the state, exclusive obligation to fund a constitutionally adequate education. They suggest that we do three simple things: To determine the elements of an adequate education, cost it out and pay for it with taxes that are proportional, reasonable, uniform throughout the state. When we started four years ago, funding an adequate education, the state share of the total cost of education went from less than 10 percent, which was last in the nation to about 60 percent of the total costs. Today we are around 50 percent of the total costs. If we net up the portion that comes from the state property tax and look at what we contribute from other than the state property tax, we are actually back to last in the nation with only about 25 percent of the total costs coming from nonproperty tax dollars, which is about last in the nation. The other lowest contributing state is around 30 percent of the total cost from nonproperty tax dollars. The spreadsheet that has just been distributed shows the total costs, the total adequacy funding to the current fiscal year 2003, it is about \$897 million. Under current law, with or without this amendment, which simply changes the portion which comes from the state property tax. That figure will rise to about \$955 million. Under the committee amendment, it will drop to \$880 million. A \$76 million difference, so we are reducing the cost of an adequate education from current law with the bill as currently amended, by about \$76 million in the next fiscal year. In fiscal year 2005, that number rises to \$168 million. Under current law, we would go to about \$968 million. Under the amendment that was just adopted, that would drop to about \$800 million. When we look at what the total costs of K-12 spending in the state, the state can be reasonably projected to be, in the current year, it is around \$1.8 billion. Maybe a little bit more than that. That's state share about \$900 million, about half. In 2004, with a 5 percent growth, which is conservative, it may be more than that, it would be about \$1.9 billion. In 2005 it will be at about \$2 billion. School districts have rising costs just like other sectors of the economy, health insurance costs are a particularly large cost and fuel costs. About 70 percent of an education is wages, salaries and benefits, and those rise with both population and in the cost of compensation. In fiscal year 2005, in both 2004 and 2005, with this amendment and with current law, we will stay at about 50 percent of the total cost being funded with state taxes. Under this amendment we will drop to about 40 percent of the costs by 2005, coming from the state, with the rest coming from local taxes and a small amount from federal funds. The portion that will be coming from nonproperty tax sources would be down around 22 percent, which will put us back to last in the nation in terms of the portion of K-12 funding that comes from state funding other than the property tax. This spreadsheet, you can go down through and compare, but you can see for every district in the state, obviously, the total adequacy funding is substantially less under the committee amendment, the bill pending as compared to the Below/Estabrook/Larsen amendment or current law. There is a second handout that could be given out now which shows the net grants. I think that part of the key point of this is we are dealing with something of a zero gain. The bill as currently pending before us actually funds net grants the same as it is funded under current law, about \$411 million. That does mean that we are shifting costs back to the property tax because there is an increase in costs to local communities, and obviously we are shifting a large burden from a state tax back to local tax. On this sheet, it does show that under the pending amendment, the Below/Estabrook/Larsen

amendment, simply by adjusting the rate down to \$4.92 we would provide \$71 million more in net grants to communities than under the bill as currently amended. In fiscal year 2005, that narrows somewhat to \$41 million difference in the net grant by just trying to adjust the rate of the state property tax to net out appreciation. There was some question earlier on about Claremont, for instance. You know, you can take Claremont as an illustration on either spreadsheet. Claremont, you can see that compared to...the net grant with this amendment for Claremont, would be greater by about \$870,000 in 2004 and by about \$130,000 in 2005. It is different for some of the other plaintiff communities. I think that they actually do a little better under the Gatsas Plan in fiscal year 2005. I think that there is a lot of confusion. Often we talk about, you know, what is happening with the tax rate? I heard some figures that I really don't understand about how some communities are going to be better off on a net basis, because the reality is that we can look at the net grant component, but when we reduce the adequacy figure, it is not like those dollars go away. They have to be made up...if they are not raised through the state property tax, retained locally, they are raised through a local property tax. That will mean for many communities that we are going to see a significant increase under the plan, particularly compared to this pending amendment.

#### **Recess.**

Senator Roberge in the Chair.

SENATOR SAPARETO: Thank you Madame President. Senator Below, as I look at the changes in this, assuming that there is difference in the distribution, is only required from the discrepancy in the tax rate, is that correct?

SENATOR BELOW: Which one?

SENATOR SAPARETO: The \$75 million in this, well probably \$71 million in difference.

SENATOR BELOW: The net grant. Correct.

SENATOR SAPARETO: All right. In that situation, the differences that you are talking about is raised from the rate. Now the rate is ranging from the four...roughly ten cents and twenty-five cents in a few years. Now I am looking at a rate of \$4.92 verses \$4.87 and \$4.72 in the second year as opposed to the \$3.50, the first one, yet the distribution amount...and this is almost in the \$70 million plus range. Now with an access evaluation of over...right now...a little over \$1 billion, that is somewhere in the vicinity of over \$10 million to maybe \$15 million. I don't see how this is. I guess my point being is that this amendment, how this is distributed and taken out has just been presented now to us on the floor and not in committee. Would it not have been wiser to have this reviewed and, just as the openness as Senator Gatsas' plan, so that we all could have verified these numbers and how these numbers came about in order for us to support it? Wouldn't it have been prudent for us to have the time to make that examination rather than doing this now on the floor?

SENATOR BELOW: These numbers are essentially the same as the so-called Hager amendment in the House. There is nothing particular new about them. They are new in the Senate. This sheet was prepared by the LBA simply comparing our amendment as drafted, would simply adjust the rate with the committee amendment, as they had the date on the



back. It was just prepared yesterday. The Gatsas plan was just rolled out in full detail a week or so ago, so it took him until yesterday for us to formulate the alternative. I certainly wouldn't disagree that maybe we should have taken a little more time to think this through.

SENATOR SAPARETO: Thank you Madame President. Would you believe that I, myself, and I am sure of many of our colleagues here, haven't even seen the Hager amendment?

SENATOR BELOW: Okay.

SENATOR FOSTER: Senator Below, looking at your second handout...I will be parochial for a minute because I have the luxury of representing Nashua only. The Below amendment in 2005 shows \$30 million roughly, in that grant, verses \$21 under the Education Committee amendment, but I know that Senator Gatsas would say that the statewide property tax and so forth is lower from \$4.72 down to \$3.50 or some number near \$3.50. I think that he would say that we could raise it locally, that difference, or something close to that difference. Have you tried to calculate that kind of a number for Nashua or for some other communities to sort of account for the reduction from the statewide property tax, the enhanced education tax?

SENATOR BELOW: Yes I have. It is a fairly straightforward calculation to look at what the net change in total property taxes are when you look at both school and the statewide component. For Nashua, you actually have to look at not just the net amount, because the net reduction in the grant for Nashua of \$8.6 million in fiscal year 2005, not only would that need to be made up with state property tax...with the local school tax increase, but the amount that was not raised and retained locally with the statewide property tax has to be made up. So there is actually a total of \$17 million that has to be made up in Nashua in fiscal year 2005 compared to current law. That would be an increase on an equalized basis, assuming an 8 percent growth in values which is what is a common assumption of **TAPE INAUDIBLE** of \$2.46; however, there is of course a reduction in the statewide property tax from \$5.80 down to \$3.50, so that nets out to a modest increase of about 16 cents compared to current law or compared to this amendment, it represents a \$1.24 more in total school taxes, state and local school taxes for Nashua compared to the pending amendment, the Below/Estabrook/Larsen amendment.

SENATOR FOSTER: So we would have to raise locally, by over a \$1 or \$1.40 to make up the difference?

SENATOR BELOW: You would have to raise the local school tax on an equivalent, equalized basis, almost \$2.50. There is some offset from the reduction on either current law or either amendment. There is some offset from a reduction in the state property tax compared to \$3.50, compared to either \$5.80 or \$4.72, but the next affect for Nashua is actually a net increase in total property taxes.

SENATOR FOSTER: Thank you.

SENATOR BARNES: Thank you Madame President. Senator Below, the question that I am going to ask is a very easy one. It requires a yes or a no, okay? My understanding is, all during this session, after the Republicans caucus, Senator Clegg and Senator Flanders go down to the Democratic caucus to discuss what has gone on upstairs, and I would assume that you folks discuss what is going on. This morning, after your caucus, and after Senator Clegg and Senator Flanders came down to you, did you give them a copy of this amendment?

SENATOR BELOW: We told them we had two amendments?

SENATOR BARNES: Yes or no?

SENATOR BELOW: No.

SENATOR BARNES: Thank you.

SENATOR ESTABROOK: Thank you Madame President. Senator Below, this is similar to the question that Senator Foster asked. I am trying to get a handle on what my constituents overall tax impact is. I don't care what is called state and what is called local, I care about their total bill. What has been explained to me is that though these spreadsheets show that my community, and I am going to take Dover, because that is my largest community, would receive less aid from the state under the Gatsas/Education Committee amendment. I am told that that is not a greater tax burden for them because they can make up the loss of that state revenue at a lower rate on the local level. I know that you, as a math wizard, have a way to figure out what the local tax effort would need to be to replace that loss of state revenue. I wonder if you could share with me how my constituents from Dover will fare under these two amendments?

SENATOR BELOW: Well, Dover would...their adequacy funding would drop by about almost \$4.3 million in fiscal year 2005. Of course the state property tax drops, too. But to make up for that nearly \$4.3 million, we would need an increase on an equalized basis in the local school tax of about \$2.23. That is \$1.01 more in total state and local property taxes than what this amendment, Below/Estabrook/Larsen amendment would do for Dover.

SENATOR ESTABROOK: So you are telling me that the reality is that if Dover continues to spend at the level it chooses to spend now, the tax bill for my constituents would actually be greater in total, under the Gatsas/Education Committee amendment than under the Below amendment?

SENATOR BELOW: I am sorry, say that again, I lost my concentration.

SENATOR ESTABROOK: In order to support a level of school spending, whatever it is now, assuming that they do not cut their spending, your explanation would seem to me to indicate that an overall tax bill by constituents, would have a higher tax bill to support that education under the Gatsas/Education Committee amendment, than it would under the Below amendment?

SENATOR BELOW: Yes, that is correct.

SENATOR ESTABROOK: Thank you. That is the bottom line that I am interested in.

SENATOR SAPARETO: Thank you Madame President. I guess this is a would you believe of Senator Below. Senator Below, I sincerely hope that you bring this amendment in through Finance so that we have the time there to review this and look at the distribution because I would love to be able to support this, but I would have to see the backup for it. I would love to see the Hager language of that to compare?

SENATOR BELOW: Okay. Yes, I believe that.

**Recess.**

Senator Eaton in the Chair.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Below.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 6 - Nays: 17**

**Floor amendment failed.**

Senator Estabrook offered a floor amendment.

Sen. Estabrook, Dist. 21

Sen. Below, Dist. 5

Sen. Larsen, Dist. 15

**May 21, 2003**

**2003-1761s**

**04/10**

### **Floor Amendment to HB 608-FN-LOCAL**

Amend RSA 198:40-c as inserted by section 10 of the bill by replacing it with the following:

198:40-c Total State Aid for Education.

I. Beginning July 1, 2004, and every fiscal year thereafter, the total state aid for education shall be determined as follows:

(a) The sum total of all local equalization aid as calculated under RSA 198:40 paid to all municipalities statewide; plus

(b) The sum total of all targeted aid as calculated under RSA 198:40-a paid to all municipalities statewide; plus

(c) The sum total of all state enhanced education aid as calculated under RSA 198:40-b.

II. In each fiscal year, the commissioner of the department of revenue administration shall determine, to the nearest cent, the state enhanced education tax rate that will match, as nearly as possible without exceeding, the amount raised statewide by the state enhanced education tax in fiscal year 2005.

SENATOR ESTABROOK: Thank you Mr. President. I rise to offer a floor amendment. This amendment deals with the CPI cap that Senator Foster referred to earlier and that Senator Gatsas said was a recommendation of the Adequacy Commission, as indeed it was. I opposed it at that time and I oppose it still. As far as I am concerned, the CPI cap is the most problematic provision of this bill with regard to cost-shifting. The proposal represents that this is a change in state policy. It is a policy that would shift more education funding responsibility to the local districts, if overall education spending rises at a rate higher than the CPI. Past experience suggests that local districts everywhere, continue to increase spending on education at roughly the same rates regardless of the amount of state aid. In the neighborhood of about 9 percent annually. The CPI, which is a member of consumer costs, not including any labor costs, which is the bulk of the school district budget, rises over time at a rate of about two-and-a-half percent. So where do these continually rising costs get paid for under this bill? Since the spreadsheets show that state aid is reduced across the board each year to meet the total imposed by the cap, there is just one answer, through the local property tax of course. The CPI cap is here for one simple reason. To help balance the budget. To avoid raising the revenue necessary to fund the current state obligations.

That was the reason for its recommendation from the Adequacy Commission and it is the reason for its inclusion here. Let's stop pretending the voters will chose to spend less at the local level. Local school boards know what adequate is, and most often strive for better. Isn't that what we should want for the state as a whole? And shouldn't we look beyond the short-term benefits to the long-term consequences. I hope that you will support this amendment to remove the CPI cap.

SENATOR SAPARETO: Thank you Mr. President. This is very similar to something that I introduced back in 1998 which talks about having the rate set up automatically by the commissioner of the Department of Revenue. I think at some point in order for us not to have this revisited, we are going to have to have the commissioner set the rate based on the earlier amount; however, that is only in section two, however, section one doesn't deal with that. I like the idea in section two, but section one, I think, may bring the cost for this to be out of control, so for that reason, I have to oppose it.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Gatsas.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 6 - Nays: 17**

**Floor amendment failed.**

Senator Foster offered a floor amendment.

Sen. Foster, Dist. 13

**May 21, 2003**

**2003-1765s**

**04/10**

### **Floor Amendment to HB 608-FN-LOCAL**

Amend RSA 198:40-c, II as inserted by section 10 of the bill by replacing it with the following:

II. In each fiscal year, the total aid calculated in paragraph I shall be adjusted by adding the average annual rate of inflation, as measured by the most recent available northeast region consumer price index for all urban consumers as published by the Bureau of Labor Statistics, United States Department of Labor, and the percentage increase in the average daily membership in residence, if any, over the most recent available fiscal year. The resulting sum, expressed as a percentage, shall be added to 100 percent to yield an adjustment factor. The total state aid for education from the immediately preceding year shall be multiplied by the adjustment factor and the product shall be the adjusted total state aid for education.

SENATOR FOSTER: Thank you Mr. President. I rise to offer a floor amendment. I will speak to it while it is being passed out. One of my biggest concerns with 608 as amended is the CPI cap. We just decided not to remove the CPI cap, but one thing that I think that we can all

agree, if you don't want education funding to grow faster than the CPI...the CPI really doesn't take into account actual spending growth, if our state is growing faster than the rest of New England has in the past. House Bill 717 had a concept of using its CPI cap plus growth in the number of students in effect, in the state. So what this amendment intends to do is to take the CPI and then the percentage increase of average daily membership over the previous fiscal year and add those two together, so you are growing CPI plus taking into account growth, if there is any growth. If there is no growth, it doesn't happen. That is what the intent of this amendment is. I think that it at least takes into account the fact that New Hampshire has been growing fast in the past and could very well grow faster in the future. I ask your support. Thank you.

### **PARLIAMENTARY INQUIREY**

SENATOR PRESCOTT: Parliamentary inquiry, Mr. President.

SENATOR EATON (In the Chair): Parliamentary inquiry.

SENATOR PRESCOTT: Thank you very much Mr. President. If I believe that the ADMR is calculated every year, would I vote against this amendment?

SENATOR EATON (In the Chair): If you are for the amendment you will vote yes. If you are against the amendment, you would vote no.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Foster.**

**Seconded by Senator Estabrook.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 6 - Nays: 17**

**Floor amendment failed.**

**Question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Prescott.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Morse, Prescott, Cohen.**

**The following Senators voted No: Below, Peterson, Foster, Larsen, Estabrook.**

**Yeas: 19 - Nays: 5**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 621-FN-A-L, establishing an early childhood literacy program. Education Committee. Ought to pass with amendment, Vote 5-0. Senator Larsen for the committee.**

Senate Education  
 May 15, 2003  
 2003-1660s  
 04/05

### Amendment to HB 621-FN-A-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT extending the Parents as Teachers program in Sullivan county and making an appropriation therefor.

Amend the bill by replacing all after the enacting clause with the following:

1 Appropriation. There is hereby appropriated the sum of \$65,000 for the fiscal year ending June 30, 2004, and the sum of \$65,000 for the fiscal year ending June 30, 2005, to the department of health and human services to continue the Parents as Teachers program in Sullivan county pursuant to RSA 193:35. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

2 Parents As Teachers Program; Reference to Department of Health and Human Services Replaced with Department of Education. Amend the introductory paragraph of RSA 193:35, I to read as follows:

I. The department of ~~[health and human services]~~ **education** shall establish the school district based Parents as Teachers Program for a rural community in Sullivan county in cooperation with School Administrative Unit 6 and the Parent Information Center. Sullivan county will be the rural site for the program because of its unique demographic profile, including the high number of risk factors affecting its children, the demonstrated interest of its public officials in the program, and the capacity to link the program to existing programs within the county including Good Beginnings, the Parent Information Center, and department of ~~[health and human services]~~ **education** programs in Sullivan county. The department shall use the following criteria to measure the effectiveness of the program:

3 Parents As Teachers Program; Rulemaking; Reference to Department of Health and Human Services Replaced with Department of Education. Amend RSA 193:36 to read as follows:

193:36 Rulemaking. The commissioner of ~~[health and human services]~~ **the department of education** shall adopt rules, pursuant to RSA 541-A, necessary to carry out the provisions of this subdivision.

4 Parents as Teachers; Report and Recommendation; Information from Department of Education. Amend RSA 193:37 to read as follows:

193:37 Report and Recommendation. On or before October 1, 2004, the department of health and human services shall prepare and submit to the speaker of the house of representatives, the president of the senate, and the chairpersons of the house and senate education committees an evaluation and report of the school district based Parents as Teachers Programs established pursuant to this subdivision, and recommendations for the expansion of the program statewide. The evaluation and report shall incorporate the criteria set forth in RSA 193:35, I and shall include an assessment of the program's effectiveness based on those criteria. ***The department of education shall provide the department of health and human services with information on the Parents as Teachers Program from the date of transfer of the program through September 30, 2004, for the purposes of preparing the report.***

5 Effective Date. This act shall take effect July 1, 2003.

**2003-1660s****AMENDED ANALYSIS**

This bill extends the Parents as Teachers Program through the fiscal year ending June 30, 2005 and makes an appropriation for the program.

The bill also transfers responsibility for the Parents as Teachers Program from the department of health and human services to the department of education.

SENATOR LARSEN: Thank you Mr. President. I move HB 621 ought to pass with amendment. The amendment passed by the Education Committee replaces the House Bill with SB 132 which has already passed the Senate. This program is a pilot program for parents as teachers in Sullivan county, which was introduced in May of 2000 and is current law. The funds for Parents as Teachers program will soon lapse. This legislation will continue the program, the Parents as Teachers program in Sullivan county helps parents understand child development and the need for parents to act as teachers to help that development. It does so by teaching parents what is an appropriate way to communicate and interact with their child. This program, which benefits both the parent as well as the child, the Education Committee asks for your support for the motion of ought to pass with amendment. I would also add that the early literacy program proposed in the original bill was well meaning and had a very high fiscal note and didn't appear to get support from the Education Committee. We thought that if nothing else, the Pilot Program in Sullivan county ought to be continued. While I continue to support the Early Literacy Program, I also believe that this Pilot Program, if that is the only thing that we can save, it needs to be saved.

SENATOR D'ALLESANDRO: Thank you Mr. President. Senator Larsen, in funds authorized, it talks about, to apply for, accept and expend not more than \$1 million from nonstate sources. These would be nonlapsing funds. Oh, that is out?

SENATOR ESTABROOK: Yes.

SENATOR D'ALLESANDRO: Okay, I guess my question is answered in terms of the amendment. Thank you.

SENATOR LARSEN: If I can just respond though. I did speak with the bills sponsor last night and their concern was that it would be advantageous to put something relating to Parents as Teachers on our books so that they could pursue federal funding. I agree with that stance and I hope that the Finance Committee will look at what grants are out there and listen to the bills sponsor. I also believe that the Senate needs to hold firm that at least Sullivan county's Parents as Teachers Program continues.

SENATOR ESTABROOK: Thank you Mr. President. I wanted to rise in support of the bill as amended because as Senator Larsen said, this is the extend to which we can support this program and at this time we certainly need to continue doing that. At the same time, I wanted to express my disappointment that we have not allowed the program to be implemented on a wider level. I think that it came out of House Finance supported and sponsored by the House Finance chair, with the understanding that it is a bill, that in the long-term will save us money as well as will help our children achieve their potential. I would like the Senate to keep those thoughts in mind. The bill will be back in a larger form. In fact, the federal government may, before we decide to act, tell us we need to act. We are, as I said before, one of the last states in the nation not to address this issue.

SENATOR D'ALLESANDRO: Either Senator Estabrook or Senator Larsen. If indeed they put \$65,000 in, why was the ability to seek other funds taken out if they are nonstate funds, the ability to seek other resources in order to fund this program was withdrawn? I mean, it doesn't make any sense to me.

SENATOR LARSEN: The Education Committee...I agree with you. I thought that we ought to send the bill to Finance to allow for some discussion of what federal funds are out there or perhaps in fact to put it on...in state law that if they are able to find federal funds, they can in fact begin the program in other locations. I didn't get the sense from the Education Committee, and in fact, as I recall, there was an inexpedient to legislate motion, and I suggested that we amend it to at least reiterate our support for Sullivan county. It was my belief that the bill was going to come to this Senate floor as inexpedient to legislate. I felt that it was better to have a small program than none at all. It will go to Finance and I think that the Finance Committee needs to explore just what federal funds are available. Is there a way that we can put it on the books and leave it open for possible receiving of grants? In this motion, we continued the life of this idea as we look for other options.

SENATOR D'ALLESANDRO: Thank you.

SENATOR O'HEARN: I would like to clarify what the Program is that we are funding is a program that is a pilot program that was started several years ago. Parents as Teachers is on our books. It is an RSA in our book and it is in the Department of Health and Human Services. The program that we have removed from this piece of legislation was to put these services within the Department of Education. There may be funds coming from the federal government, but I don't believe that we need legislation to accept that kind of money, to use it. I think that we need to keep our options open. There are places that we can use in Health and Human Services. It is also the Parent Information Center, which is a group funded by IDEA, which is a subsection of the Department of Education. The Department of Education can always accept these services. There was just no funding coming forward on this piece of legislation and we thought the best thing to do was to keep the Pilot Program alive.

SENATOR BELOW: Thank you Mr. President. While I agree that the Parents as Teachers Program in Sullivan county is important and should be continued and supported, I think that it is a real shame that we are not enacting the early childhood literacy program. I think that it is something that we should be doing and I regret that that portion of the bill is not moving forward.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 717-FN-L**, relative to targeted aid to education. Education Committee. Inexpedient to legislate, Vote 4-1. Senator Green for the committee.

SENATOR GREEN: Thank you Mr. President. I move HB 717 inexpedient to legislate. This legislation abolishes the statewide property tax, sends aid to the needy communities based on property values, median household income, population and cost of county living. This bill relies heavily on state revenues in the state's Education Trust Fund. This fund



currently exists to help fund adequacy grants and is made up of various taxes. The increasing of aid is tied to the Consumer Price Index based on the biennium. While this plan has been carefully planned and thought out, removing the statewide property tax, as this plan proposes, would require a Constitutional Amendment. Constitutional Amendment Concurrent Resolution (CACR) 13 was attached to this legislation but has been retained in the House committee. Without the Constitutional Amendment, there is concern over the constitutionality of this plan based on the Claremont rulings. While the current funding plan needs to be improved a uniform tax is still necessary. Please support the committee recommendation of inexpedient to legislate. Thank you.

SENATOR COHEN: Thank you Mr. President. It sounded like the committee report was urging an ought to pass on that. There was an awful lot of good things in this bill that I would like us to consider and I am urging my colleagues to overturn the committee report of inexpedient to legislate and instead, send this targeted aid education legislation to the Senate Finance Committee. House Bill 717 is based on a sound education formula, unlike the proposal put forth very recently by Senator Gatsas and others. House Bill 717 does not require us to reinvent the wheel for education funding, rather it is based on what forty-three other states have done and have done successfully. This is a tried and proven formula that works and has worked throughout the country. The proposal by Senator Gatsas is based more on a mathematical formulation than on education policy. It has never been tried anywhere. Given New Hampshire's history, when it comes to education funding, I think that it would be best to draw on the experiences of others and put into effect, a formula that we know will get education aid to where it is needed most. While I certainly appreciate the time and effort that has gone into Senator Gatsas' proposal, and which is moving forward, and as we all know, it was only unveiled very recently. There has not been time to fully evaluate it and consider its ramifications in 2006 or thereafter. I believe that it would be foolhardy for this body to give its entire support to just one proposal, so quickly, especially when we have a bill that is based on six months of intensive work by the country's top education funding experts. This issue is too important for us to act hastily. I urge us to keep HB 717 alive until at least the Senate Finance Committee can complete its review. I urge us to do so with an amendment in that committee, to make this legislation effective as soon as possible. July 1 of this year, and finally give the citizens of New Hampshire the funding solution that we have waited for, for so long. There are some small technical changes that have been recommended by the Department of Education and I would hope that they could be acted upon in that committee. In the last election, education funding was certainly the number one issue. The citizens of New Hampshire sent us here to solve this problem once and for all. Surveys showed current options New Hampshire was a targeted aid program. House Bill 717 not only uses existing resources, it eliminates the statewide property tax. That has a very nice ring to it to me, and make sure that extra aid gets to the students who need it most. House Bill 717 would eliminate forever, the shell game that we call the statewide property tax, but for the most part, never even leaves the communities. The citizens of New Hampshire are watching us very carefully today. They are waiting to see if we have the political courage to finally solve the education funding program. If we send forward, just the Gatsas proposal, and it turns out that there are unforeseen problems, what then? How will we look to the voters of New Hampshire if we ignore the

most thoroughly researched education funding proposal ever presented to this legislature, and kill it in favor of legislation based on mathematical theory. I think that we all know the answer to that. I urge us, my colleagues, to show the political courage to keep HB 717 alive until we can more thoroughly study these proposals side-by-side and do what is right for New Hampshire and for our children. I can't see the harm in doing that and I urge your support.

**SENATOR FOSTER:** Thank you Mr. President. I was the member of the Education Committee who dissented from the report. I didn't do so because I particularly favor 717 or getting rid of the statewide property tax, but I do think that there are aspects of the bill that were very well thought out. There was a tremendous amount of work that went into it. I was troubled by the fact that we never received the DRA's spreadsheet from 717 to see how it worked. For whatever reason, they have never been produced. I don't know why, but it never happened, although the bill went through the whole House and was passed and everything else. While I certainly hope that Senator Gatsas' plan holds up to further scrutiny as it goes through the process, I, too, thought that it just made sense to send the bill over to Finance, not because I particularly support all of the policy aspects of it, but there are some interesting provisions in it. The amendment that was not adopted here, about the CPI and the average daily membership, it is not actually in the bill, but in the amendment that was suggested. The way that the targeting works, I think that is very creative in the bill. Actually some of the results in terms of where money ends up is very similar to Senator Gatsas' bill. I felt that it was best for us not to be too hasty and to send it over to Finance where it can sit if we need it to be utilized for some purpose. Thank you.

**Question is on the adoption of inexpedient to legislate.**

**A roll call was requested by Senator Cohen.**

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Johnson, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Sapareto, Estabrook, Prescott.**

**The following Senators voted No: Gallus, Kenney, Boyce, Below, Foster, Larsen, D'Allesandro, Morse, Cohen.**

**Yeas: 13 - Nays: 9**

**Committee report of inexpedient to legislate is adopted.**

### **MOTION OF RECONSIDERATION**

Senator Below, having voted with the prevailing side, moved reconsideration of **HB 717-FN-L**, relative to targeted aid to education, whereby it was voted inexpedient to legislate.

**Adopted.**

**HB 717-FN-L**, relative to targeted aid to education.

### **PARLIAMENTARY INQUIREY**

**SENATOR KENNEY:** Mr. President, parliamentary inquiry?

**SENATOR EATON (In the Chair):** I will allow it this time. Go ahead.

**SENATOR KENNEY:** Just to clarify it for Senator Below, I just want to make sure what we are doing right now, Mr. President?

**Question is on the adoption of inexpedient to legislate.**

**A roll call was requested by Senator Cohen.**

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Johnson, Below, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Larsen, Gatsas, Barnes, Sapareto, Estabrook, Prescott.**

**The following Senators voted No: Gallus, Kenney, Boyce, Foster, D'Allesandro, Morse, Cohen.**

**Yeas: 15 - Nays: 7**

**Committee report of inexpedient to legislate is adopted.**

**HB 751-FN-L**, implementing an alternative school building aid grant formula, establishing size and cost standards for the construction of new school facilities, and permitting high school vocational technical education programs which lease space to be eligible for school building aid grants. Education Committee. Ought to pass with amendment, Vote 5-0. Senator Johnson for the committee.

### **Senate Education**

**May 15, 2003**

**2003-1657s**

**04/05**

### **Amendment to HB 751-FN-LOCAL**

Amend RSA 198:15-hh, III as inserted by section 5 of the bill by replacing it with the following:

III. A school district, city, cooperative school district, joint maintenance agreement, or receiving district operating an area school as defined in RSA 195-A:1, shall submit details of the lease arrangement, including a copy of the proposed lease agreement, in writing to the state board of education on such forms as the state board may prescribe. Grant applications for leased space shall be submitted before January 1 of each year in order to be eligible for grants in the fiscal year following the year of submittal. The state board of education shall, no later than March 1, 2004, adopt rules pursuant to RSA 541-A, relative to procedures for grant applications for leased space.

**SENATOR JOHNSON:** Thank you Mr. President. I move HB 751 ought to pass with amendment. This legislation is a result of an audit performed by the LBA. That audit recommended that the school building aid formula factor in size of construction or expansions. This legislation provides a building formula that includes limits based on size and also provides aid for vocational programs that are leasing space. A school may exceed the size limitations but will not receive additional aid from the state for the excess space. It is an alternative formula based on a community's ability to pay and median family income. I want to take this opportunity to commend former Representative Robert McKinley from Milton for all of the hard work that he did on this bill over the years. The Education Committee asks your support for the motion of ought to pass as amended. Thank you Mr. President.

**SENATOR D'ALLESANDRO:** Senator Johnson, this is the first time that I have seen a leasing of space to be eligible for a grant. Is that an ongoing situation? Do they have to repeat that lease on a yearly basis? I mean what is behind this?

**SENATOR JOHNSON:** That is in the amendment. I believe that it will be ongoing.

SENATOR D'ALLESANDRO: Is the lease for just the building or can you lease equipment?

SENATOR JOHNSON: Senator O'Hearn, could you answer that?

SENATOR O'HEARN: The leases are for the vocational education and they run...what the cost in the fiscal note is about \$66,000 a year. It is for leased space. It does not mention equipment, but I am not sure. I think that equipment could be. I think that we were looking at the automotive industry and when you need...if you are leasing space you may be leasing the computer technology that goes with the leased space. Maybe these are things that we can clear up in Finance to exactly what it is.

SENATOR D'ALLESANDRO: Thank you Senator.

SENATOR ESTABROOK: Thank you Mr. President. I rise in support of the bill, but I would just like to raise a couple of issues that I would like to have Senate Finance think about when they see this bill come to them. One is related to the question that Senator D'Allesandro asked about the lease length. In my reading of the bill, the lease can be for ten years and we will pay them whatever percentage they qualify for, \$30, \$40, \$50 for the length of that ten-year lease and then it can be renewed for another ten years if the need is shown. I would like the Senate Finance to think about on the long-term basis of 10-20 years, what kind of financial obligation that rests with the state as opposed to paying just the principle of a bonded construction? The other question would be that the part of this bill creates brand new restrictions on the space that state building aid will be reimbursed for. Another question that I would like Finance to examine is whether it would also be appropriate to place such costs and cost limitations on the leased space. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 786-FN-L**, relative to the participation of the state and its political subdivisions in the federal No Child Left Behind Act of 2001. Education Committee. Ought to pass with amendment, Vote 5-0. Senator Foster for the committee.

**Senate Education**

**May 15, 2003**

**2003-1661s**

**04/05**

**Amendment to HB 786-FN-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; State Compliance with the No Child Left Behind Act of 2001; General Funds Prohibited. Amend RSA 21-N by inserting after section 11 the following new subdivision:

Compliance with the No Child Left Behind Act

21-N:12 Compliance with No Child Left Behind. Notwithstanding any provision of law to the contrary:

I. Section 9527 of the No Child Left Behind Act of 2001 provides that nothing in this act shall be construed to mandate a state or any subdivision thereof to spend any funds or incur any costs not paid for under this act.

II. The state board of education and the commissioner of the department of education are hereby prohibited from adopting any new administrative rules or regulations, or amending existing administrative rules or regulations for the purpose of complying with the No Child Left Behind Act of 2001 that will require funding from general funds.

2 Effective Date. This act shall take effect upon its passage.

**2003-1661s**

### AMENDED ANALYSIS

This bill prohibits the state board of education and the department of education from adopting any new administrative rules or regulations or amending any existing administrative rule or regulation for the purpose of complying with the No Child Left Behind Act of 2001 if such compliance would require funding from general funds.

SENATOR FOSTER: Thank you Mr. President. I move HB 786 ought to pass with amendment. Section 9527 of the federal No Child Left Behind Act of 2001 provides that nothing in this act shall be construed to mandate a state or subdivision to spend any funds or incur any costs not paid for under the act. This legislation prohibits the state Board of Education and the commissioner of the Department of Education from adopting rules or regulations in order to comply with No Child Left Behind that would require funding from state general funds. This legislation acknowledges the federal government's obligation to fund this act so New Hampshire can maximize the educational opportunities that No Child Left Behind provides. The Education Committee unanimously voted ought to pass as amended and we ask for your support. Thank you.

**Amendment adopted.**

### MOTION TO TABLE

Senator O'Hearn moved to have **HB 786-FN-L** laid on the table.

**Adopted.**

### LAIID ON THE TABLE

**HB 786-FN-L**, relative to the participation of the state and its political subdivisions in the federal No Child Left Behind Act of 2001.

**HB 75**, relative to timber harvesting. Energy and Economic Development Committee. Ought to pass with amendment, Vote 3-0. Senator Gallus for the committee.

**Energy and Economic Development**

**May 14, 2003**

**2003-1618s**

**08/01**

### Amendment to HB 75

Amend the bill by replacing all after section 6 with the following:

7 Conditional Deed. Amend RSA 477:35-a to read as follows:

477:35-a Conditional Deed.

**I.** After August 29, 1969, any conveyance of standing trees which includes therein a stipulation requiring that the trees be removed within a certain time or by a certain date shall render the deed conditional, and failure by the purchaser to remove said trees within the stipulated time shall result in the forfeiture of the purchaser's rights in the trees unless the deed specifically provides otherwise.

***II. After the effective date of this paragraph, any conveyance of standing trees which does not include therein a stipulation requiring that such trees be removed within a certain time or by a certain date shall render the deed conditional, and failure by the purchaser to so remove said trees within 7 years from the date of conveyance shall result in the forfeiture of the purchaser's rights in the trees unless the deed specifically provides otherwise.***

8 Previous Conveyances. Amend RSA 477:35-b to read as follows:

477:35-b Previous Conveyances.

***I. Any conveyance of standing trees made prior to August 29, 1969, which includes therein a stipulation requiring that the trees be removed within a certain time or by a certain date, but which does not include therein any terms to the effect that the right to the trees shall revert to the grantor upon the passage of the stated time or stated date, shall be presumed as having intended to grant an absolute property interest in the trees to the purchaser even though the trees remain uncut beyond the stipulated time or date; provided, however, that any such right to said trees on the part of the purchaser or his heirs or assigns must be asserted and any litigation begun within 7 years after August 29, 1969, or within 7 years of the stipulated time of removal of the trees, whichever occurs last, or otherwise all such rights to said trees shall revert to the grantor or his heirs or assigns. Nothing in this section shall be construed as precluding the introduction of any evidence in any action to rebut the presumption of the granting of ownership of trees as provided by this section.***

***II. Any conveyance of standing trees prior to the effective date of this paragraph which does not include therein a stipulation requiring that such trees be removed within a certain time or by a certain date, shall be presumed as having intended to grant to the purchaser an absolute property interest in the trees standing at the date of the conveyance even though the trees remain uncut beyond a reasonable time for their removal after said date; provided, however, that any such right to said trees on the part of the purchaser or his heirs or assigns must be asserted and litigation begun with 7 years after the effective date of this paragraph or otherwise all such rights to said trees shall revert to the grantor or his or her heirs or assigns. Nothing in this section shall be construed as precluding the introduction of any evidence in any action to rebut the presumption of the granting of ownership of trees as provided by this paragraph.***

9 Effective Date.

***I. Sections 7 and 8 of this act shall take effect 60 days after its passage.***

***II. The remainder of this act shall take effect January 1, 2004.***

2003-1618s

#### AMENDED ANALYSIS

This bill requires that a copy of the signed notice of intent to cut be posted in public view at a wood cutting job site.

This bill also statutorily stipulates when trees must be removed if a conditional deed or conveyance does not specify a time.

SENATOR GALLUS: Thank you Mr. President. I move that HB 75 ought to pass with amendment as was recommended by the Senate Committee on Energy and Economic Development. This bill would help streamline part of the logging business within New Hampshire by allowing property owners who wish to cut timber, to post their notice of intent at the log-

ging site. Doing so would allow them to move forward with logging instead of waiting for the state to respond with its acknowledgement of receipt of the intent to cut. The amendment attached to this bill addresses a question of property rights. If a parcel of land is sold without the accompanying timber rights, then according to our amendment, the owner of the timber rights would have up to seven years to harvest the timber. The committee supports this bill with the amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 446**, relative to building permits. Energy and Economic Development Committee. Ought to pass, Vote 3-0. Senator Odell for the committee.

SENATOR ODELL: Thank you Mr. President. I move HB 446 ought to pass as recommended by the Committee on Energy and Economic Development. This bill provides a simple service to local planning boards by providing a clear guideline to local officials as to when it is appropriate for them to propose new changes in zoning ordinances. Currently there is no statute that offers guidance on this point and local planning boards have historically expressed concern over the impact of publicly posting zoning changes well in advance of town meetings. The committee believes that this bill will help address these concerns, and therefore, recommends that the bill ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 547**, relative to the duties of the oversight committee on telecommunications and relative to the membership of the Mount Washington Commission. Energy and Economic Development Committee. Inexpedient to legislate, Vote 3-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you Mr. President. I move that HB 547 be voted inexpedient to legislate as was recommended by the Senate Committee on Energy and Economic Development. The committee did not hear any supporting testimony from the bills sponsor and we had one person testify against the bill. After reviewing the bill within our executive session, the committee determined that this bill does not warrant passage. I ask the Senate to vote this bill inexpedient to legislate. Thank you Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**HB 562**, relative to an additional duty of the air pollution advisory committee. Energy and Economic Development Committee. Inexpedient to legislate, Vote 3-0. Senator Prescott for the committee.

SENATOR PRESCOTT: Thank you Mr. President. Similar to the previous bill, we did not hear any testimony for or against the bill. The committee decided in executive session to move inexpedient to legislate.

**Committee report of inexpedient to legislate is adopted.**

**HB 565-FN-A**, establishing a commission to implement the Hampton Beach Master Plan. Energy and Economic Development Committee. Ought to pass, Vote 3-0. Senator Prescott for the committee.

SENATOR PRESCOTT: Thank you Mr. President. Hampton Beach is one of the jewels of New Hampshire. We want to keep it going. The town of Hampton has established a master planning committee a couple of years ago to start looking at the developing of the Hampton Beach area. They have made a lot of progress with their plans and now need the legislature to approve a commission that will implement this master plan. In the state's interest, the Energy and Economic Development Committee believes that this is the right thing to do. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 705**, establishing a committee to study the application of the communications services tax to the provision of Internet services and relative to the rate of the communications services tax and the property tax exemption for wooden poles and conduits. Energy and Economic Development Committee. Ought to pass, Vote 2-0. Senator Prescott for the committee.

SENATOR PRESCOTT: Thank you Mr. President. The Energy and Economic Development Committee wishes to have this passed. I want to be very clear in pointing out that this bill does not create an internet tax. There appears to be a lot of confusion about this in our committee hearing. This bill simply creates a committee to study the application of the communications services tax, the CST. On those communication services that are used to connect to the internet. The bill also continues the current CST rates and exemptions for wooden telephone poles and conduit from new municipal taxes. The CST is tax equitable to all telecommunications providers and generates \$132 million per biennium. The exemption has been in place since 1998. The committee believes that both the revenues and exemptions should continue. Thank you Mr. President.

SENATOR GREEN: Thank you Mr. President. As many members of this chamber know, I am adamantly opposed to some portions of this bill. I do not intend to debate it at length today due to the time constraints and the agenda that we have; however, it is going to be sent to Finance and I am sure that we will have our debate in Finance. At that time, I am sure that we will have some discussions that will be meaningful. My biggest concern about this bill is that it takes away substantial revenues from the local communities. Those of us who have been talking about concerns about local communities, this is what it is all about. When we get to it, we will have all of the numbers and show you what the differences are. I don't think that any of you will want to stand up when we get through and go back to your local communities and tell them that this is what the state is doing in terms of taking the opportunity to tax space at your local communities, because all of you know that your communities need these taxes. So at that time, I will have that discussion. I do appreciate the hard work of the committee, although I do not agree with the results that came out of the committee. Thank you Mr. President.

SENATOR ESTABROOK: Thank you Mr. President. I just rise to agree basically with Senator Green and express my appreciation to the fact that there will be some further look at this bill. I share some remaining concerns and will look forward to the results of the Finance Committee.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**



**Senator Foster Rule #42 on HB 705.**

**HB 787-FN-A**, relative to forest products promotion, establishing a forest products utilization charge, and requiring the department of resources and economic development to convene a task force. Energy and Economic Development Committee. Ought to pass, Vote 3-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you again Mr. President. I move that HB 787 ought to pass as was recommended by the Committee on Energy and Economic Development. The committee heard a lot of testimony in our hearing supporting this bill. If passed, this bill will provide immediate assistance to the power plant in Whitefield, New Hampshire, which is a wood burning energy plant. This bill will also help the logging industry in New Hampshire in the long-run, which will be very crucial to the continued success of the economy in the North country. The committee believes that this bill ought to pass. Thank you Mr. President.

SENATOR GATSAS: Senator Gallus, is it your understanding that there may be an amendment coming in Finance that would be a floor on the price of wood?

SENATOR GALLUS: Actually there is. We have an amendment that we are hoping to introduce in the Finance Committee that will straighten the bill out just a little bit.

SENATOR BELOW: Thank you Mr. President. The committee also heard in the public hearing on this bill, testimony from the Department of Environmental Services and the Department of Resources and Economic Development suggesting fairly minor, technical amendments, which the committee kind of ran out of time to take up because so many different things were going on. I would just hope that the Finance Committee, although I would have taken care of policy, but I think that there are a couple of technical amendments the two departments brought forward that we should consider perhaps in Finance. Fortunately, a majority of this committee is also on Finance.

SENATOR BOYCE: Senator Gallus, is it true that in this bill there will be a surcharge on ratepayers energy costs to subsidize this plant which the ratepayers have already subsidized by a multimillion dollar buyout in order to get it out of the agreement with PSNH? Is that what I understand?

SENATOR GALLUS: Basically there is a subsidy in the package. It adds to our mix of energy sources because of the wood, which is a good thing, long-term. The major thing that I am looking at this bill for is to just save the logging industry as we know it in the state of New Hampshire. With the problems of the pulp mill shut down in Berlin, New Hampshire, which chewed up a lot of the low grade wood in the state, we cannot afford, at this particular time in the history of the logging industry and the state of New Hampshire, it affects everybody, every logger, every timber landowner in the state of New Hampshire, if we have no source to bring this low grade wood. So yes, there is a subsidy, to answer your question.

SENATOR BOYCE: So we are asking the ratepayers to pay a subsidy to a plant that has already been bought out by a ratepayer subsidy?

SENATOR GALLUS: The main thing that you are looking at is a \$90 million or so contribution to the economic well-being of the state from the logging industry and you can't lose that, especially up north, but it affects everybody in the entire state.

SENATOR BOYCE: Thank you.

SENATOR JOHNSON: Senator Gallus, wasn't there an extensive study done over the last two to three years relative to other sources to try and move those...the wood products into those and they were not successful, so we are back to this wood burning again?

SENATOR GALLUS: Absolutely. There were two or three studies done by DRED and I have looked at those studies to see what other uses that we could...what other types of uses we would have for that low grade lumber. Basically they're inefficient uses and they really don't work out, bottom line.

SENATOR JOHNSON: Thank you.

SENATOR GATSAS: Senator Gallus, that subsidy that you were just asked about, that is not a new subsidy, it is already one that is in effect and is just merely drawing off of those reserves that have not been used?

SENATOR GALLUS: Absolutely.

SENATOR GATSAS: Thank you.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

Senator Roberge is in opposition to the motion of ought to pass on HB 787-FN-A.

**HB 810-FN-A**, relative to processing excavating and dredging and terrain alteration permits, changing the fees for permits, establishing 2 new positions, and making an appropriation therefor. Energy and Economic Development Committee. Ought to pass, Vote 2-1. Senator Prescott for the committee.

SENATOR PRESCOTT: Thank you Mr. President. I move ought to pass as was recommended by the Energy and Economic Development Committee. The bill will make some internal changes within the Department of Environmental Services relating to excavation and dredging permits. The bill sets new mandatory time frames and a new fee structure for the review of wetlands applications. It also allows for two new positions to be funded within the department in order to review terrain alteration if applicable. The majority of the committee feels that this bill will help address a chronic problem concerning a timely review of wetlands applications. This was well attended at the committee hearing. It was recommended by the industry as well as by the Department of Environmental Services. I for one, have personal knowledge of people saying that I would gladly pay a little bit more if I just got an answer out of DES. I think this bill addresses that, giving them two new positions. Those two new positions will sunset in two years if they don't get the answers back. I think this is a good bill. Thank you Mr. President.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HCR 15**, relative to relaxing air quality standards by the United States Environmental Protection Agency. Energy and Economic Development Committee. Ought to pass with amendment, Vote 2-1. Senator Prescott for the committee.

**Energy and Economic Development**  
**May 14, 2003**  
**2003-1617s**  
**08/01**

**Amendment to HCR 15**

Amend the resolution by replacing the title of the resolution with the following:

A RESOLUTION relative to air quality standards by the United States Environmental Protection Agency.

Amend the resolution by replacing all after the title with the following:

Whereas, New Hampshire has long suffered from power plant emissions migrating from the west; and

Whereas, these emissions negatively effect New Hampshire's air quality, forests, lakes, and streams; and

Whereas, the industry made a social contract with the American public 30 years ago to install state-of-the-art pollution controls; and

Whereas, New Hampshire has been a leader in reducing power plant emissions by enacting the multiple pollutant reduction program; now, therefore, be it

Resolved by the House of Representatives, the Senate concurring:

That the general court hereby urges Congress to adopt aggressive multiple pollutant reduction legislation to reduce power plant emissions similar to the legislation adopted by the state of New Hampshire; and

That copies of this resolution be forwarded by the house clerk to the President of the United States; the Speaker of the United States House of Representatives; the President of the United States Senate; The Justices of the United States Supreme Court; and the members of the New Hampshire congressional delegation.

**2003-1617s**

**AMENDED ANALYSIS**

This house concurrent resolution urges Congress to adopt multiple pollutant reduction legislation similar to legislation adopted by the state of New Hampshire.

SENATOR PRESCOTT: Thank you Mr. President. I move HCR 15 ought to pass with amendment as was recommended by the Senate Committee on Energy and Economic Development. This resolution recognizes the severe impact on New Hampshire that results from power plants' emissions flowing across our air from other states. It also recognizes the fact that New Hampshire, along with its congressional delegation, has actively sought after cleaner air standards. The resolution calls for congress to give special attention to the problem of the power plant emissions and the potential negative effect they can have on our clean act and that of other states. The committee recommends that this resolution ought to pass with amendment. I encourage the full Senate to vote accordingly. I believe that this HCR just asks our delegation to do what New Hampshire has already done. We had a clean power act last term, we are asking them to take a look at this and see if they can't do the same. Thank you very much Mr. President.

SENATOR BELOW: Thank you Mr. President. I rise in opposition to the committee amendment. What Senator Prescott just described is the committee amendment which is a complete substitution of the HCR as it came over from the House. Now what he describes is laudable and it is

nice language, but it is different than what the House sent us. As a stand-alone resolution, I think that it would be fine, but it guts the purpose of the original HCR which was relative to relaxing air quality standards by the US EPA. It changes that title to one that is just relative to air quality standards. The issue is that the EPA has adopted new source review rules that relax the circle standard. The state of New Hampshire, through its attorney general is party to a motion today, that pending rules, that was brought out March 3, 2003 and action that is supported by Governor Benson, this day, to state that it is necessary to prevent irreparable harm to public health and the environment and to avoid the immediate burdens imposed on the petitioning states air programs, such as New Hampshire's, it is joined by other states. The original legislation as passed by the House is in support of that kind of position that has already been adopted by the state through the attorney general. I would urge defeat of the committee amendment and passage of the HCR as it was passed by the House.

SENATOR LARSEN: I want to rise to reinforce what Senator Below has said which is if you look at HCR 15 as passed by the House, it does address the announced changes that negatively impact New Hampshire's air quality and the announced rollbacks that it would exempt up to half the major pollution sources. It was a much stronger amendment. While the printed amendment in the calendar is nice, we need to reinforce and strengthen our attorney general as he proceeds in this lawsuit and recognize that the rollbacks will actually affect New Hampshire severely. This resolution as introduced is stronger and more direct than the amendment in the calendar.

SENATOR BOYCE: Thank you Mr. President. Since the topic of the original resolution has come up, I feel that I need to chime in on this. The original resolution was based on the inaccurate perception of what was done in these new source review policies. What we have in the Midwest are a bunch of power plants that were basically grandfathered in under the EPA rules. They could pollute more than the new power plants could because they were old power plants. As long as they weren't upgraded and modernized, they didn't have to meet the same rules as these new plants. So there is no incentive for them to ever modernize and make them more efficient and less polluting. They can continue polluting at a high level for as long as they continue to operate. What the new rules have done is, that you can take an old plant that is effectively grandfathered and make some changes to it cleaner and more efficient, but not have to come up all the way to what a brand new plant would be. So we are taking a plant that...like your 1968 Ford Fairlane going down the road spewing oil smoke and we are saying, okay, we are going to let you put a new engine in your old Ford, and we are not going to make you put a catalytic converter and the new computer on it to make it as efficient as a brand new 2003 Ford. You can still keep driving that old 68 or 78 Ford or whatever it is. You can keep driving it but we are going to let you have that new engine, which is going to be better. It won't be spewing the oil smoke, but it is not going to be quite as good as if you bought a brand new car, but we realize that it costs a lot to buy a new car. It costs less to buy a new engine. So we are going to let these plants...the EPA, in this new set of rules, is going to let these plants upgrade somewhat, to a better standard than they are, but not all the way to the new standards, which they won't do. They are going to keep driving that old Ford with smoke spewing out the back as long as we let them. They are not going to put the new engine in it because if

they put a new engine in it, they have to put the catalytic converter and all the other stuff to make it a 2003. So this is a better situation for our air than continuing under the old rules which said that those plants never had to be fixed. That is what I have to say on that. Thank you.

SENATOR BELOW: Thank you Mr. President. I rise to speak a second time if I may. Thank you. It would be nice if it was that simple, but I think that there is a lot of disagreement about this. In fact, both through our attorney general and through our Department of Environmental Services, New Hampshire has asserted that this issue hasn't been adequately examined. That in fact, in a letter from the acting commissioner of DES to the committee, they noted that EPA claims that the rules will actually reduce air pollutant emissions, have never been substantiated. In fact, DES has reviewed three projects, including two located in the Midwest and one in New Hampshire and found that emissions would have increased rather than decreased if these rule changes had been in effect at the time of the construction of these projects. I think that this is not a simple issue, but it is interesting to note that the current commissioner of the US Environmental Protection Agency has announced her resignation. One of the things that have been the topic of conversation in the past day or two is the fact that she had disagreed with the rest of the administration on these new rule changes and that is one of the factors in her deciding to leave the agency at this time. I think that all of our congressional delegation express a great deal of concern about these changes in the rules and the concern that they may in fact have a significant negative impact on New Hampshire. We had some of our worse ground level ozone exceedences in the month of April this year. Some of the earliest highest levels that we have ever had in over 20 years, the earliest dates that have seen violations of the unhealthy air standards. The issue is that with these new rules, a lot of these plants that are really at or almost beyond the end of their life, they are desperately in need of refurbishment, renovation. These new rules would allow them to expand and increase capacity and actually increase overall emissions from what they are at current level, and that is not good for our health or environment. So again, I would encourage defeat of the committee amendment and passage of the HCR as passed by the House.

SENATOR COHEN: Thank you Mr. President. Yes, briefly. I think that here in New Hampshire we have a history of trying to do what is best for New Hampshire, not always accepting what is coming down and being imposed on us from Washington, such as No Child Left Behind, such as the Environmental rollbacks and changes that have been under this administration, and uniquely, which are undoing all of the environmental good which we have accomplished dramatically since the first Earth Day in 1970. One of our most valuable things here in New Hampshire is our clean air. People come to New Hampshire for our clean air, to see the sites and it has been adversely affected. We all know that. It affects our tourism here, which is very important and it is going to continue to be more important for our future. The amendment weakens the bill which originally came down...which is a very good bill. I would urge defeat of the amendment and passage of the bill as passed by the House.

SENATOR PRESCOTT: Thank you Mr. President. As Senator Below said, differences of opinions around this bill caused our committee to make the amendment. It is our opinion, from the committee, that you ought to pass the amendment because of the misunderstandings that are out there concerning the previous HCR. I ask that this full Senate comply with the committee amendment. Thank you Mr. President.

SENATOR D'ALLESANDRO: Thank you Mr. President. I urge defeat of the amendment and acceptance of the original amendment from the House. I just want to relate one situation. Thirty years ago we made a commitment to make change. We have made that change in New Hampshire. We cleaned up our plants. We spent a lot of money to clean up those plants, to get scrubbers in those stacks and to do the right thing. Now 30 years ago that commitment was made. If that commitment is not being fulfilled, why should we be extending it? It seems to me, one of the things that people complain about is that we never do what we say we are going to do. We said 30 years ago that we were going to make an attempt to clean things up, we haven't done it. It seems to me that we ought to do it and we ought to support the resolution as proposed because what it says is that it is about time that we started living up to our commitment. If we make commitments, that is what makes us strong with the people, what we deliver on our commitment. We delivered in New Hampshire, they should be delivering elsewhere. Thank you Mr. President.

SENATOR PRESCOTT: Thank you Mr. President. I don't believe that I could vote for the original bill because it says this: That we object to the rollback of the environmental controls, which are detrimental to New Hampshire. We don't know that that is true. I cannot vote for that because there are differing opinions concerning air pollution coming into the state of New Hampshire. Of course we all want clean air and of course we want that. That is why we wrote the committee amendment, and that is what we say. I thank you very much for the opportunity again to speak.

In recess.

Out of recess.

Question is on the adoption of committee amendment.

A roll call was requested by Senator Prescott.

Seconded by Senator Green.

The following Senators voted Yes: Gallus, Johnson, Kenney, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Sapareto, Morse, Prescott.

The following Senators voted No: Boyce, Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.

Yeas: 15 - Nays: 7

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 66-FN, relative to executive agency rulemaking authority. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 5-0. Senator Peterson for the committee.

**Senate Executive Departments and Administration**

**May 15, 2003**

**2003-1663s**

**05/04**

**Amendment to HB 66-FN**

Amend RSA 541-A:3-b as inserted by section 1 of the bill by replacing it with the following:

541-A:3-b Restriction on Rules Incorporating Documents by Reference. No agency may propose or adopt a rule under RSA 541-A:3 or RSA 541-A:19 that incorporates by reference any code, rule, or document from another state government without specific authority in the authorizing legislation or specific legislative approval for such a rule.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 New Paragraph; Air Pollution Control; Rulemaking Relative to Vapor Recovery; Incorporation by Reference Permitted. Amend RSA 125-C:4 by inserting after paragraph I the following new paragraph:

I-a. In adopting rules under paragraph I, the department may incorporate by reference standards issued by the California air resources board relative to certification and testing of vapor recovery equipment.

**2003-1663s**

### AMENDED ANALYSIS

This bill prohibits administrative agencies from adopting rules that incorporate by reference any code, rule, or document from another state without specific legislative approval.

The bill allows the department of environmental services to adopt rules relative to vapor recovery equipment by incorporating by reference standards issued by the California air resources board.

SENATOR PETERSON: Thank you Mr. President. I move ought to pass with amendment on HB 66. House Bill 66 addresses the unintended consequences from the current practice of adopting rules and regulations for New Hampshire, by simply referencing rules and regulations from other states without legislative review. Applying rules from other states with distinct regulatory environments invites confusion and have included provisions that do not reflect the situation in New Hampshire such as rules from a western state that required the use of sulfur based fuels. There is a sentence in there somewhere...The committee amended the bill to clarify that the authority to reference rules, codes or documents from other states must be included in the authorizing legislation. The committee further amended the bill to allow the Department of Environmental Services to continue to reference standards issued by the California Air Resources Board or (CARB), relating to certification and testing of vapor recovery equipment at gas stations. Certification and testing of vapor recovery equipment is required by law and the CARB standards are appropriate for New Hampshire. The committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 213**, relative to reporting requirements for dedicated funds. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 5-0. Senator Kenney for the committee.

### MOTION TO TABLE

Senator Kenney moved to have **HB 213** laid on the table.

**Adopted.**

**LAID ON THE TABLE**

**HB 213**, relative to reporting requirements for dedicated funds.

**HB 410**, relative to disclosure of information for purposes of background investigations by criminal justice agencies of applicants for police, corrections, and security employment. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 5-0. Senator Kenney for the committee.

**SENATOR KENNEY:** Thank you Mr. President. I move inexpedient to legislate on HB 410. House Bill 410 would require private and public sector employees to make available to any criminal justice employer, information about an employees work history. The bills intent to facilitate due diligence is worthy, but the criminal information the bill seeks is already public information and there is no process to defend oneself against damaging claims other than the courts. This would be unfair to the employer and to the employee. The committee unanimously recommends inexpedient to legislate. Thank you Mr. President.

**Committee report of inexpedient to legislate is adopted.**

**HB 646-FN**, relative to liquor licenses and fees. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Prescott for the committee.

**SENATOR PRESCOTT:** Thank you Mr. President. I move ought to pass on HB 646. This House Bill streamlines and modernizes the wholesale licensing process by establishing a businesswide license for liquor and wine carriers, liquor and wine distributors and representatives, rather than licensing individual sales people or distributors. The bill creates the liquor and wine vendor license because most companies are not just liquor or wine vendors anymore, and establishes a rectifier license for companies that distill liquor, and a private club license to address the diversity of social clubs. House Bill 646 will also authorize the commission to issue licensing for up to three-year periods without prorating fees. In addition, the bill changes the terminology from "off sale" and "on sale" to "off premise" and "on premise", and allows licensed restaurants to maintain a wine bin for individual clients and charge a fee for serving the wine. The fee structure relative to the licensing changes, was adjusted accordingly by the House to reflect the new business licenses and the committee unanimously recommends ought to pass. Thank you Mr. President.

Senator Prescott offered a floor amendment.

**Sen. Prescott, Dist. 23**

**May 20, 2003**

**2003-1701s**

**03/09**

**Floor Amendment to HB 646-FN**

Amend the bill by replacing section 5 with the following:

5 Caterer-Off Site; Reference Changed. Amend RSA 175:1, XV(b) to read as follows:

(b) An off-site catering service which is a business held out and advertised to the public which has a permanent non-residential business office with securable beverage and liquor storage areas. With the approval of the commission, an off-site catering service without a kitchen may subcontract for cooking services or the preparing of food. ~~[Notwithstanding RSA 178:20, V(c)(2), catering services under this paragraph shall sell liquor and beverages only with full course meals.]~~



Amend RSA 178:22, V(e)(4)(B) as inserted by section 13 of the bill by replacing it with the following:

(B) On-site caterers and off-site caterers shall file, between January 15 and February 15 of each year, a certificate form with the commission covering food and beverage and liquor sales for the previous calendar year. All catered sales shall be noted on the certificate form which shall be furnished by the commission.

SENATOR PRESCOTT: Mr. President. I rise to offer a floor amendment. Off site caterers: there are 25 of them and they are licensed in New Hampshire. Twenty-one of those are operated by restaurants. New Hampshire law currently requires the remaining four to serve a full course meal when alcohol is served while caterers operating under the license of a restaurant do not have the same direction or restriction. This amendment will allow all caterers in the state to serve a meal only when the client wishes and it will help the level of the playing field of these 25 caterers. The Liquor Commission and the Restaurant and Lodging Association support this change and I hope that the full Senate passes this amendment. Thank you Mr. President.

#### **Floor amendment adopted.**

Senator Prescott offered a floor amendment.

Sen. Prescott, Dist. 23

**May 22, 2003**

**2003-1788s**

**03/09**

#### **Floor Amendment to HB 646-FN**

Amend RSA 175:6, II as inserted by section 10 of the bill by replacing it with the following:

II. Upon written authorization from the commission it shall be lawful for any out-of-state wholesaler of liquor or any licensed liquor vendor, ~~[table]~~ wine vendor, liquor manufacturer *rectifier*, or domestic wine manufacturer to pick up from, transport, and deliver liquor or table wines, as applicable, to any commission warehouse, to any other licensed warehouse, to the state line, or to their place of business.

Amend the bill by replacing section 38 with the following:

38 Beverage Distributor Agreements; Definitions. Amend RSA 180:1 to read as follows:

180:1 Definitions. In this chapter:

I. "Beverage distributors agreement" means a commercial relationship, not necessarily in writing, of definite or indefinite duration, between a beverage manufacturer license holder, brew pub, *or* beverage vendor, ~~[or beverage vendor importer,]~~ and a wholesale distributor, pursuant to which the wholesale distributor has been authorized to distribute one or more of the brewer's brands of beverages. A beverage distributors agreement shall not be considered to be a franchise relationship. The performance or accomplishment of any of the following acts shall constitute prima facie evidence of an agreement:

(a) The shipment or preparation for shipment of fermented malt beverages by any beverage manufacturer, beverage vendor, ~~[beverage vendor importer]~~ or its agents to a wholesale distributor within this state;

(b) The acceptance of any order for fermented malt beverages by any brew pub, beverage manufacturer, beverage vendor, ~~[beverage vendor importer]~~ or its agents to a wholesale distributor within this state; or

(c) The payment by a wholesale distributor and the acceptance of payment by any beverage manufacturer, brew pub, beverage vendor, ~~[beverage vendor importer]~~ or its agent or the shipment of an order for beverages intended for sale within this state.

II. "Beverage sales territory" means the area of primary sales responsibility expressly or impliedly designated by any agreement between a wholesale distributor and a brew pub, beverage manufacturer, *or* beverage vendor~~[, or beverage vendor importer]~~ for the brand or label of a beverage manufacturer or brew pub, or an area designated in a filing with the state liquor commission for self-distribution by a brew pub or beverage manufacturer.

III. "Good cause" means the failure by any party to an agreement, without reasonable excuse or justification, to comply substantially with an essential and reasonable requirement imposed by either party.

IV. ~~["Goodwill," unless otherwise agreed, means earnings before taxes resulting from the wholesale distributor's sale of the beverage manufacturer's, beverage vendor's, or beverage vendor importer's brand or brands of beverages averaged over the wholesale distributor's last 3 fiscal years, or averaged over the wholesale distributor's recent fiscal years in which the wholesaler has had such earnings if fewer than 3 fiscal years.~~

~~V.]~~ "Wholesale distributor licensee" means any person offering beverages for sale or resale to retailers without regard to whether the business of the person is conducted under the terms of an agreement with a beverage manufacturer, brew pub, *or* beverage vendor~~[, or beverage vendor importer]~~.

Amend the bill by replacing all after section 41 with the following:

42 Cancellation. RSA 180:3 is repealed and reenacted to read as follows:  
180:3 Cancellation.

I. Notwithstanding the terms, provisions, or conditions of any agreement, no beverage manufacturer, brew pub, or beverage vendor shall amend, cancel, terminate, or refuse to continue or renew any agreement, or cause a wholesale distributor to resign from an agreement, unless good cause can be established or proven for amendment, termination, cancellation, nonrenewal, noncontinuation, or resignation. Good cause shall include:

(a) Revocation of the wholesale distributor's license to do business in the state, or suspension of the wholesale distributor's license when such suspension adversely affects the wholesale distributor's ability to sell beverages.

(b) Bankruptcy or insolvency of the wholesale distributor.

(c) Assignment for the benefit of creditors or similar disposition of the assets of the wholesale distributor.

(d) Failure by the wholesale distributor to comply substantially, without reasonable excuse or justification, with any reasonable and material requirement, including but not limited to those specified in RSA 180:11, imposed upon the wholesale distributor by the beverage manufacturer, brew pub, or beverage vendor.

(e) Fraudulent conduct of the wholesale distributor in its dealing with the beverage manufacturer, brew pub, or beverage vendor or the products of the beverage manufacturer, brew pub, or beverage vendor.

II. The mere sale or purchase of a beverage manufacturer, brew pub, or beverage vendor shall not constitute good cause under paragraph I, unless the wholesale distributor declines to execute an agreement with the successor beverage manufacturer, brew pub, or beverage vendor

within 30 days after receipt via certified mail return receipt requested. Such agreement must assign the same brand or brands and territory as previously held by the wholesaler distributor in its agreement with the prior beverage manufacturer, brew pub, or beverage vendor, but may impose different obligations upon the parties, which are commercially reasonable and attainable. The successor beverage manufacturer, brew pub, or beverage vendor shall have 60 days after purchase to provide the wholesale distributor with such an agreement or it shall waive its right to present a new agreement, in which case the agreement with the prior beverage manufacturer, brew pub, or beverage vendor shall continue in full force and effect.

43 Notice of Intent to Terminate; References Deleted. Amend the introductory paragraph RSA 180:4 to read as follows:

Prior to any termination procedure initiated by the beverage manufacturer, brew pub, **or** beverage vendor [~~or beverage vendor importer~~], a wholesale distributor shall be informed in writing of any claimed deficiency existing in [~~his~~] **the** sales territory and shall be given reasonable time to make requested corrections. After this reasonable time has elapsed, a beverage manufacturer, brew pub, **or** beverage vendor [~~or beverage vendor importer~~] shall provide a wholesale distributor at least 90 days' prior written notice of any intent to amend, terminate, cancel, or not renew any agreement. The notice shall state all the reasons for the intended amendment, termination, cancellation, or nonrenewal. [~~The notice provisions of~~] This section shall not apply if the reason for the amendment, termination, cancellation, or nonrenewal is:

44 Notice of Intent to Terminate; References Deleted. Amend RSA 180:4, V-VI to read as follows:

V. Willful breach of any material provision of a written agreement between a beverage manufacturer, brew pub, **or** beverage vendor [~~or beverage vendor importer~~] and a wholesale distributor.

VI. Any attempted transfer of business assets of the wholesale distributor, voting stock of the wholesaler, voting stock of any parent corporation of the wholesale distributor, any change in the beneficial ownership or control of any entity other than a parent corporation owning or controlling voting stock of the wholesale distributor, or any attempted or actual transfer or assignment of the beneficial interest of membership in a limited liability company, when the wholesale distributor has failed to give reasonable prior written notice to the beverage manufacturer, brew pub, **or** beverage vendor [~~or beverage vendor importer~~] of the proposed transfer.

45 New Paragraph; Notice of Intent to Terminate. Amend RSA 180:4 by inserting after paragraph VII the following new paragraph:

VIII. Fraudulent conduct of the wholesale distributor in its dealings with the beverage manufacturer, brew pub, or beverage vendor or the products of the beverage manufacturer, brew pub, or beverage vendor.

46 Compensation. RSA 180:5, I is repealed and reenacted to read as follows:

I. Any beverage manufacturer, brew pub, or beverage vendor which amends, cancels, terminates, or refuses to continue or renew any agreement, or causes a wholesale distributor to resign from an agreement, without good cause in violation of RSA 180:3, or unreasonably withholds consent to any assignment, transfer, or sale of all or any part of a wholesale distributor's business or assets, shall pay the wholesale distributor reasonable compensation for the value of the wholesaler distributor's business or assets that have been lost or diminished as a result of the amendment, cancellation, termination, refusal to deal or renew, or

withholding of consent. Reasonable compensation for the value of the wholesale distributor's business or assets that are so lost or diminished shall include the fair market value of the distribution rights that will be so lost or diminished. If a wholesale distributor has been paid a consideration by a successor wholesaler with respect to the sale, transfer, or assignment of the wholesale distributor's interest in the sale or distribution of a brand or brands, the beverage manufacturer, brew pub, or beverage vendor shall be liable only for compensatory damages in an amount reflecting the difference in the amount already paid to the wholesale distributor and the fair market value of the wholesale distributor's beverage business and assets, excluding its tangible assets. If, following an amendment, cancellation, termination, refusal to deal, or forced resignation in violation of RSA 180:3, or an unreasonable withholding of consent to an assignment, transfer, or sale of all or any part of the wholesale distributor business or assets in violation of RSA 180:2, a wholesale distributor remains in business as a wholesale distributor of the affected brand or brands by permanent injunction or otherwise, the wholesale distributor shall be entitled to no compensation under this section, but may recover actual damages, if any, as provided in RSA 180:6.

47 Compensation; References Deleted. Amend RSA 180:5, II to read as follows:

II. In the event that the beverage manufacturer, brew pub, **or** beverage vendor [~~or beverage vendor importer~~] and the wholesale distributor are unable to agree on the reasonable compensation to be paid under paragraph I, the matter may, by agreement of the parties, be submitted to a neutral arbitrator to be selected by the parties; or, if having agreed to arbitration the parties cannot agree on an arbitrator, the arbitrator shall be selected in accordance with RSA 542:4. The costs of arbitration shall be paid in equal shares by the wholesale distributor and the beverage manufacturer, brew pub, **or** beverage vendor [~~or beverage vendor importer~~]. In all other regards, arbitration proceedings shall be governed by RSA 542.

48 Judicial Remedies. Amend RSA 180:6 to read as follows:

180:6 Judicial Remedies.

I. If the brewer or wholesale distributor fails to comply with this chapter, the affected party may maintain a civil action in a court of competent jurisdiction, provided, however, that to the extent the parties by agreement specify that disputes arising out of the brewer-wholesale distributor relationship shall be resolved by arbitration, such procedure shall be exclusive and may be compelled by either party upon proper application. ***Any agreement to resolve a dispute by arbitration may only be entered after a bona fide dispute has arisen out of the brewer-wholesaler relationship, and no beverage manufacturer, brew pub, or beverage vendor may impose binding arbitration of any issue as a term or condition of its beverage distributor's agreement with a wholesaler distributor or require that the arbitration be conducted outside of this state or be governed by other than the law of this state, except with respect to conflict of laws.***

II. In any action brought pursuant to paragraph I the court may grant such relief as the court determines is necessary or appropriate considering the purposes of this chapter.

III. The prevailing party in any action under paragraph I shall be entitled to actual damages ***as provided in this chapter***, including reasonable attorneys' fees and [~~also including the value of the wholesale distributor's business,~~] as specified in RSA 180:5, I.

49 Settlement of Disputes. Amend RSA 180:7 to read as follows:

180:7 Settlement of Disputes. *Subject to the provisions of RSA 180:6*, nothing in this chapter shall be construed to limit or prohibit voluntary good faith settlements of disputes entered into between the parties.

50 Beverage Distributor Agreements; References Deleted. Amend RSA 180:8-11 to read as follows:

180:8 Sale of Beverage Manufacturer, Brew Pub, ~~or Beverage Vendor;~~ ~~or Beverage Vendor-Importer~~. The purchaser of a beverage manufacturer, brew pub, ~~or beverage vendor;~~ ~~or beverage vendor-importer~~ shall become obligated to all terms and conditions of the agreement in effect on the date of purchase unless subsequently terminated by the beverage manufacturer, brew pub, ~~or beverage vendor;~~ ~~or beverage vendor-importer~~ for good cause. "Purchase" shall include, but not be limited to, the sale of stock, sale of assets, merger, lease, transfer, or consolidation.

180:9 Exclusive Wholesale Distributor Territorial Agreements. It shall be unlawful for a wholesale distributor, brew pub, or beverage manufacturer to sell any brand of beverage in this state except in the territory described in a distribution agreement authorizing sale of that brand or label within a designated area, and within that designated area the wholesale distributor, brew pub, or beverage manufacturer shall service all dealer and retailer licensees without discrimination. The distribution agreement shall be in writing and shall specify the brand or label it covers. When a beverage manufacturer[;] ~~or beverage vendor;~~ ~~or beverage vendor-importer~~ sells several brands, the agreement need not apply to all brands sold by the beverage manufacturer[;] ~~or beverage vendor;~~ ~~or beverage vendor-importer~~ and may apply only to one brand. No beverage manufacturer, brew pub, beverage vendor, ~~[beverage vendor-importer;]~~ or other supplier shall provide by the written distribution agreement for the distribution of a brand or label to more than one distributor for all or any part of the designated territory.

180:10 Filing. A copy of each distribution agreement and any amendment to it shall be filed with the commission by the beverage manufacturer, brew pub, ~~or beverage vendor~~ ~~[or beverage vendor-importer]~~ and wholesale distributor, promptly following January 1, 1982, for any distribution agreement in effect on that date, or promptly following its execution for an agreement, renewal, or amendment made after that date.

180:11 Quality Control Services. Every beverage wholesale distributor shall service, for the purpose of quality control, all of the beverages it sells to its retailers. Each such wholesale distributor shall provide such additional quality control services and comply with such additional quality control standards as are from time to time specified in writing by the owner of the trademark of the brand or label of beverage, provided that such activities or standards are reasonable and are reasonably related to the maintenance of quality control. An exclusive territorial designation in any distribution agreement shall be changed only upon the written consent of the beverage manufacturer, beverage vendor, ~~or brew pub,~~ ~~[or beverage vendor-importer;]~~ as applicable, and the wholesale distributor, and shall be filed pursuant to RSA 180:10, and the commission shall require each party to verify that the level of service within the designated territory shall not be affected by such change.

51 Sunday Dancing Permitted; References Changed. Amend RSA 332-D:6 to read as follows:

332-D:6 Sunday Dancing Permitted. Notwithstanding the provisions of RSA 332-D:4, public dancing shall be permitted after 2 p.m. on Sundays in hotels and restaurants licensed under RSA ~~[178:19],~~ **178:21**, II(a)

and (b), and in ballrooms licensed under RSA ~~[178:20, V(c)]~~ **178:22, V(c)**, provided that such dancing shall have the approval of the state liquor commission.

52 Repeal. The following are repealed:

- I. RSA 175:1, IX, relative to beverage representatives.
- II. RSA 175:1, XI, relative to beverage vendor importers.
- III. RSA 175:1, XLIII, relative to liquor and wine import warehouse.
- IV. RSA 175:1, XLV, relative to liquor and wine salespersons.
- V. RSA 175:1, LXIII, relative to service bars-portable.
- VI. RSA 179:19, IV, relative to entertainers under 15 years of age.
- VII. RSA 179:46, relative to sales of holders of wine vendor licenses.

53 Severability. If any clause, sentence, paragraph, or section contained in this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or section contained in this act directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if the invalid provisions had not been included therein.

54 Applicability. The provisions of this act relating to beverage distributor agreements shall apply to all beverage distributor agreements in existence on or after May 8, 2003.

55 Effective Date.

I. Section 54 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect July 1, 2003.

SENATOR PRESCOTT: Thank you Mr. President. I would like to offer a floor amendment. This has to do with the beverage distributors agreement between brewers and wine and beer distributors. Thank you Mr. President.

SENATOR D'ALLESANDRO: Mr. President, could we get some more information from Senator Prescott about this amendment?

SENATOR PRESCOTT: Thank you Mr. President. I would like to be able to expound about this greatly but it would probably be more difficult for me to do so, so I am going to give you a brief description. A while ago in 1984 there was a law drafted that said that if there were not just cause to cancel a beer distributor, that beer distributor would be offered a fair market value. That fair market value was based upon the profits that that company made. Now when the laws changed in 1986 to allow Class S and Class C corporations, and I don't know which one, but most corporations now, do not show the full profits, they use the profits as personal income. So what happened was that the law that was passed in 1984 to give a fair market value of a distributorship, changed, and the evaluation went way down because people would, rather than have a corporation make the money to be taxed by the state, would take it as personal income to avoid the tax by the state. If you use the 1984 law, you will not have a fair evaluation of the company that is being terminated for distributorship but no just cause. So if there is no just cause for canceling a distributorship, this bill would take effect. It would say that, and if you read it through, how it would come up with the fair market value for that beer distributorship. I ask that you do peruse it and if you feel comfortable with it, pass it as this has been worked on prior to the committee voting to exec the bill. At that time, the committee understood, at Executive Departments and Administration, that the bill was not ready to be executed upon with this amendment. The parties in-

volved, the ED & A, and the parties involved, needed extra time. That extra time brought it to this point this morning, to bring a floor amendment that we believe, ED & A believes, and they can stand up and speak for themselves, and the parties involved, including the brewers and the beer distributors, all came to this agreement and we, speaking for the whole ED & A as the Chairman, myself, I am, I am speaking for the whole committee. We believe that this is a very good and worthwhile amendment to bring a fair market value to a beer distributor that is being canceled for no just cause. Thank you very much.

SENATOR CLEGG: Senator Prescott, it is my understanding that the old chapter was called "goodwill". And as you explained, that once they went into an S Corp or an LLC, the original statute only talked about corporate profits. Is that correct?

SENATOR PRESCOTT: That is correct.

SENATOR CLEGG: I also want to be clear in my mind that the distributors in the state of New Hampshire have gotten together with the major beer brewers, I guess I wouldn't call them manufacturers, and this is a result of lawyers for all of the major corporations getting together with the beer distributors and coming to this agreement, all parties involved, all parties affected are in agreement with this. Is that correct?

SENATOR PRESCOTT: That is correct. That is the opinion of the ED & A Committee. Thank you very much Mr. President.

SENATOR CLEGG: Thank you.

SENATOR D'ALLESANDRO: Just one comment Mr. President. I noticed that Sunday dancing is also permitted under this bill. Was that a matter of dispute prior to this time? Dancing after two o'clock on Sunday afternoon? That must have been forbidden by law, and now because of this great compromise we can now dance after two o'clock on Sunday afternoon. I appreciate that. That really is goodwill. Thank you Mr. President.

SENATOR CLEGG: Where is that?

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 719-FN-A**, relative to the duties, function, and operation of the Pease development authority. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 5-0. Senator Cohen for the committee.

**Senate Executive Departments and Administration**

**May 15, 2003**

**2003-1666S**

**05/10**

### **Amendment to HB 719-FN-A**

Amend the bill by replacing sections 4 and 5 with the following:

4 New Paragraph; Pease Development Authority; Definition of State Tidal Waters Added. Amend RSA 12-G:2 by inserting after paragraph XXIII the following new paragraph:

XXIII-a. "State tidal waters" means any harbor or other tidal waters within the state.

5 New Paragraph; Pease Development Authority; Definition of Tidal Waters Added. Amend RSA 12-G:2 by inserting after paragraph XXIV the following new paragraph:

XXIV-a. "Tidal waters" means any waters, including rivers, that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

Amend the introductory paragraph of RSA 12-G:42, XI as inserted by section 10 of the bill by replacing it with the following:

***XI. Adopt rules, after obtaining prior approval by the fiscal committee of the general court and the board, relative to the setting and collecting of fees authorized under RSA 12-G:38 relating to foreign trade zones; RSA 12-G:42, IV and V, relating to wharfage, dockage, and other marine terminal operations; RSA 12-G:42, VI, relating to moorings, slips, and wait lists; RSA 12-G:42, IX, relating to commercial piers identified in paragraph IX and other division property; RSA 12-G:49-a relating to pilotage; and any other matter necessary for the proper administration of the division with respect to the setting and collecting of fees. The rules adopted under this paragraph shall not be subject to the provisions of RSA 541-A, so as to provide the authority with the ability to maximize revenues and to adjust fees according to market conditions and trends as is the common practice in private industry. Fees established pursuant to this paragraph shall be consistent with the following criteria:***

Amend RSA 12-G:42, XI(e) as inserted by section 10 of the bill by replacing it with the following:

***(e) Fees relating to commercial piers and use of other division property shall be established giving due consideration to the fees for use of similar privately-owned facilities.***

Amend RSA 12-G:42 as inserted by section 10 of the bill by inserting after paragraph XII the following new paragraph:

***XIII. Have the authority to create and maintain a special account within the Pease Development Authority Ports and Harbors Fund established in RSA 12-G:37 for the purpose of providing funds for capital improvements, equipment, maintenance, and repair of division property. The authority shall deposit in the special account up to 50 percent of any rent revenue generated by the lease or license of division property for bulk or container cargo storage, pursuant to RSA 12-G:8, V, which exceeds the operating expenses of the division, as determined under RSA 12-G:37. The special account shall be nonlapsing and continually appropriated to the division for the purpose of initiating and implementing capital improvements, equipment purchases, maintenance projects, and repair of division property.***

Amend the bill by inserting after section 19 the following and renumbering the original section 20 to read as 21:

20 Pease Development Authority Ports and Harbors Fund; Reference to Special Account for Division Property. Amend RSA 12-G:37, III to read as follows:

III. This fund shall constitute a continuing appropriation for the benefit of the authority. ***Except as provided in RSA 12-G:42, XIII***, all division revenues associated with operations and responsibilities assigned



by the authority to the division in excess of the operating expenditures required for the activities of the division shall be deposited in the general fund until such time as any bonds authorized and issued relating to division property or division projects have been retired. After such bonds have been retired, any amount remaining to the credit of the authority in this fund at the close of any fiscal year in excess of the amounts required under paragraph II shall lapse and shall be returned to the general fund of the state.

SENATOR COHEN: Thank you Mr. President. I move ought to pass with amendment on HB 719. This is house cleaning legislation which comes as a result of the merger between the Port Authority and the Pease Development Authority, which happened two years ago. This bill makes certain definitions in fees uniform and creates a position of deputy chief harbor master. That position will be filled by a certified full-time police officer and will help address the enhanced security needs at the port. The position is underwritten by a restricted fund for mooring and wait list fees. The committee amended the bill to create a reserve account for the port to fund capital improvements, maintenance and repair of division property and will be funded by a percentage of land rents received from division tenants. Such a reserve fund is already permitted to the PDA for its airport property. The committee further amended the bill to clarify the definition of "tidal waters" and "state tidal waters" and to clarify that the port authority's rulemaking power addresses only the settling and collecting of fees which must still be approved by Fiscal. House Bill 719 will help complete the integration of the Port Authority with Pease Development Authority and the committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 825**, establishing a committee to study methods of safely reducing the prison population in the state. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 5-0. Senator Estabrook for the committee.

**Senate Executive Departments and Administration**

**May 16, 2003**

**2003-1668s**

**04/05**

### **Amendment to HB 825**

Amend subparagraph I(a) as inserted by section with the following:

(a) Two members of the house of representatives, appointed by the speaker of the house.

SENATOR ESTABROOK: Thank you Mr. President. I move ought to pass with amendment on HB 825. The prison population in New Hampshire is expected to reach 3,000 inmates by 2010. The cost currently stands at almost \$30,000 per inmate. Rising prison costs are a major budget driver. A study of methods to safely reduce the prison population deserves a comprehensive review and will help the state meet its obligation to protect its citizens. Alternatives to incarceration are available to law enforcement and the justice system that are short of imprisonment but will hold criminals accountable while reducing the rate of recidivism. The committee also

noted that incarceration rates of women are rising faster than those of men and should be included in the study. The committee amendment in the calendar, on page 47, mistakenly reduces the House membership to two members when the intent was to reduce the Senate membership to two members. So the committee unanimously recommends that the committee amendment be voted down. We will let them have three House members if they'd like, so that the appropriate floor amendment may be brought forward. Although I will say that since during the committees deliberation, at least two Senators expressed interest in serving on this commission, including myself, so if there is a third, perhaps we could do without an amendment at all, but since the committee wanted to have two Senators, I will bring forth an amendment once we vote down the committee amendment.

**Amendment failed.**

Senator Estabrook offered a floor amendment.

Sen. Estabrook, Dist. 21

**May 21, 2003**

**2003-1762s**

**04/10**

**Floor Amendment to HB 825**

Amend paragraph I of section 2 of the bill by replacing it with the following:

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house.

(b) Two members of the senate, appointed by the president of the senate.

SENATOR ESTABROOK: Thank you Mr. President. I rise to offer a floor amendment. It follows the committees recommendation to reduce it to two members of the Senate. I guess you can think about it for a minute. If there are three, we can vote the amendment down.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 112-FN**, establishing a point system for the annual moose permit lottery. Finance Committee. Ought to pass, Vote 6-0. Senator Gatsas for the committee.

SENATOR GATSAS: Thank you Mr. President. I move HB 112 ought to pass. There is no fiscal impact. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 166**, relative to employees of the New Hampshire retirement system. Finance Committee. Ought to pass, Vote 6-0. Senator Gatsas for the committee.

SENATOR GATSAS: Thank you Mr. President. I move HB 166 ought to pass. This bill has no fiscal impact. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 356-FN**, relative to including medical benefits costs in the purchase of creditable service in the retirement system. Finance Committee. Ought to pass, Vote 6-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move that HB 356 ought to pass. That was "otta" pass. This bill allows individuals to join the retirement system as long as they cover their own medical benefits. The cost of their own medical benefits. This bill has a one-time fiscal impact to the system of \$65,000. Please join the Finance Committee in voting "otta" pass.

**Adopted.**

**Ordered to third reading.**

**HB 387-FN**, allowing free admission to the state park system for certain members of the New Hampshire national guard. Finance Committee. Ought to pass, Vote 6-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move that HB 387 ought to pass. This bill has an impact of less than \$10,000. Thank you. I hope that you vote with the committee.

Senator Kenney offered a floor amendment.

Sen. Kenney, Dist. 3

**May 21, 2003**

**2003-1742s**

**04/10**

### **Floor Amendment to HB 387-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** allowing free day-use admission to the state park system for certain active and retired members of the New Hampshire national guard.

Amend RSA 216-A:3-g, IV(a) as inserted by section 1 of the bill by replacing it with the following:

IV.(a) Any active member of a federally recognized unit of the New Hampshire national guard who is a legal resident of this state, and who meets the minimum requirements for satisfactory membership, as defined in the United States Department of the Army and the United States Department of the Air Force regulations, and is serving in pay grades E1 through E6 shall not be charged a fee for day-use admission to the state park system. Any retired member of the New Hampshire national guard who served in pay grade E6 or below shall not be charged a fee for day-use admission to the state park system. This section shall apply to members of the Active Guard and Reserve program in the New Hampshire national guard.

**2003-1742s**

### **AMENDED ANALYSIS**

This bill provides that certain active and retired members of the New Hampshire national guard who are legal residents of this state, shall not be charged a fee for day-use admission to the state park system.

SENATOR KENNEY: Mr. President, I would rise to offer a floor amendment. As you know, when this bill first came before the Senate, there was some discussion on whether or not we could broaden this entitlement by a little bit. The floor amendment simply says that if you are retired and your are E6 and below, that you would be entitled to the same benefit

as someone who is not an active guardsmen. The rationale behind that is that typically when you are in the National Guard, it is very difficult to get promoted. You typically retire an E5 and E6 or an E7. This would really, for the most part, not affect retirees who are E4 or below. They would probably be court-martialed first if they retired at that rank. So I think that it is a goodwill gesture to say to our retirees who are at the E5 and E6 ranks and junior ranks that we extend it to them. Again, many of these National Guardsmen who are in retirement, often come out of retirement to help the state out and various other causes, whether it be Special Olympics or through the Emergency Management. The fiscal impact on this would be approximately \$6,000. I would just encourage my colleagues to pass this floor amendment.

SENATOR LARSEN: Senator Kenney, I am just curious since this wasn't vetted by Finance, what effect this additional language has on the cost...loss of revenue to the parks system? I assume that we didn't hear that.

SENATOR KENNEY: That is correct. I think what I just said at the tail end of my comment was that there would be a loss of about \$6,000 to the parks system.

SENATOR LARSEN: Oh, then I didn't hear that. Thank you very much.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 521-FN**, relative to requiring treatment for persons convicted of DWI offenses. Finance Committee. Ought to pass, Vote 6-0. Senator Below for the committee.

SENATOR BELOW: Thank you Mr. President. I move HB 521 ought to pass. This bill makes certain improvements to the DWI statute, including elimination of a prepayment requirement for certain persons that are required to attend the multiple DWI offender program. There is a minimal and indeterminable fiscal impact, so I would urge you to join the committee in voting ought to pass.

Senator Clegg offered a floor amendment.

Sen. Clegg, Dist. 14

**May 22, 2003**

**2003-1773s**

**03/04**

### **Floor Amendment to HB 521-FN**

Amend the bill by inserting after section 7 the following and renumbering the original section 8 to read as 10:

8 New Paragraph; Attendance at Impaired Driver Intervention Program Required; Proof. Amend RSA 263:65-a by inserting after paragraph IV the following new paragraph:

V. A person shall be presumed to have furnished proof of successful completion an impaired driver intervention program if the person furnishes a report indicating that he or she has completed attendance at the I.D.I.P., the M.O.P., or an equivalent program. The presumption may be overcome by a hearing requested by the department, with notice to and an opportunity to be heard by the person, where the department shall have the burden of proving that the person has not successfully completed an impaired driver intervention program.

9 New Subparagraph; Penalties for Intoxication or Under Influence of Drugs Offenses; Proof of Successful Completion of Program. Amend RSA 265:82-b, IV by inserting after subparagraph (c) the following new subparagraph:

(d) A person shall be presumed to have furnished proof of successful completion an impaired driver intervention program if the person furnishes a report indicating that he or she has completed attendance at the I.D.I.P., the M.O.P., or an equivalent program. The presumption may be overcome by a hearing requested by the department, with notice to and an opportunity to be heard by the person, where the department shall have the burden of proving that the person has not successfully completed an impaired driver intervention program.

SENATOR CLEGG: Thank you Mr. President. I rise to offer a floor amendment. At the time that we did this bill it originated in Judiciary and at the time, I was unaware of current practice until a constituent called. If you get caught for DWI you lose your license for ninety days and you have to take the class which is either the I.D.I.P or the M.O.P. When you are done with that...when your ninety days are done, you should be able to get your license. What has happened is that the groups that give it, decide well if you are not willing to give up drinking, maybe you need another eight to ten hours. That equates to another eight to ten weeks and during that period, they take your license from you. So your ninety day license suspension just got two months or two and a half months longer. You have the right to ask for a hearing, but when you ask for a hearing, they give you a paper that says that it is called "a red flag hearing". They term it a red flag hearing because they tell you that if you ask for a hearing to go against their recommendation, there will be a red flag posted on your license record for the rest of your life, so people are afraid to do it. What this says is that if you haven't completed successfully the program that they give to DWI offenders, that before they can take your license for another two and a half months, that they have to give you a second hearing to prove that it is necessary. Thank you.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 533**, relative to health carrier disclosure for medical child support enforcement. Finance Committee. Ought to pass, Vote 6-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move that HB 533 ought to pass. This bill allows Health and Human Services to contract with an agency that matches people who are ordered to provide healthcare insurance for their dependent child and are not doing so. It allows the Health and Human Services to have this company match them up with the database that shows people who have medical insurance in other states. This involves a \$35 per found person. If they get a hit, it is \$35. If they get no hit, it costs nothing. So for that \$35 we find somebody who should be paying for their kids medical care and probably take somebody off of Healthy Kids. So I ask you to pass this. It will have a positive impact on the state if any. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 543**, relative to increasing the membership of the board of accountability and relative to appeals of board decisions. Finance Committee. Ought to pass, Vote 6-0. Senator Green for the committee.

SENATOR GREEN: Thank you Mr. President. I move that HB 543 ought to pass. It has a fiscal impact of less than \$10,000. I appreciate your support. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 571-FN-L**, relative to Old Newport Road and the end of Main Street in the town of Marlow. Finance Committee. Ought to pass, Vote 6-0. Senator Odell for the committee.

SENATOR ODELL: Thank you Mr. President. I move HB 571 ought to pass. This bill involves less than \$10,000 of expenditures in 2004 and savings thereafter. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 578-FN-A**, establishing a program for self-certification by small quantity hazardous waste generators and making an appropriation therefor. Finance Committee. Ought to pass, Vote 6-0. Senator Below for the committee.

SENATOR BELOW: Thank you Mr. President. I move HB 578 ought to pass. The modest appropriations and expenditures to establish this program for self-certification by small quantity hazardous waste generators will be offset by the fees collected from such programs, which will simplify regulatory compliance for hundreds and hundreds of small businesses. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 598-FN-A**, relative to the agriculture nutrient management program and making an appropriation therefor. Finance Committee. Ought to pass, Vote 6-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you Mr. President. I move HB 598 ought to pass. This bill provides for funding for the Agricultural Nutrient Management Program. This legislation is positive for the general fund by providing a small source of revenue. Please join the Finance Committee by voting this bill ought to pass. Thank you. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 617-FN**, relative to the licensure of dentists and regulation by the board of dental examiners. Finance Committee. Ought to pass, Vote 6-0. Senator Green for the committee.

SENATOR GREEN: Thank you Mr. President. I move that HB 617 ought to pass. This bill has no fiscal impact. I would appreciate your vote. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 659-FN**, relative to penalties for failure to obey a subpoena or summons. Finance Committee. Ought to pass, Vote 6-0. Senator Boyce for the committee.

**SENATOR BOYCE:** Thank you Mr. President. I move that HB 659 ought to pass. The Finance Committee finds that there is no fiscal impact. Please join us in voting for this bill. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 703-FN**, permitting free admission to the state park system for disabled veterans. Finance Committee. Ought to pass, Vote 6-0. Senator Green for the committee.

**SENATOR GREEN:** Thank you Mr. President. I would like to move that HB 703 ought to pass. This bill has a small fiscal impact of \$10,000 per year. Please join the Finance Committee in voting this bill ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 728-FN-A**, establishing a dedicated fund for organic certification inspections. Finance Committee. Ought to pass, Vote 6-0. Senator D'Allesandro for the committee.

**SENATOR D'ALLESANDRO:** Thank you Mr. President. I move that HB 728 ought to pass. This bill establishes a dedicated fund for organic certification inspectors. The bill was requested by the states Organic Foods Industry in order to comply with federal guidelines. The state currently has no procedure for certifying packers and distributors of organic food. This bill would alleviate packers from traveling to another state to obtain certification. The bill ultimately has a positive fiscal impact on the general fund. Please vote HB 728 ought to pass. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 802-FN-A**, encouraging the department of transportation to retrofit a highway rest stop to be a solar powered facility. Finance Committee. Ought to pass, Vote 6-0. Senator Below for the committee.

**SENATOR BELOW:** Thank you Mr. President. I move HB 802 ought to pass. This bill simply authorizes the Department of Transportation to accept donations, grants and corporate sponsorships to retrofit a highway rest stop with a photo voltaic elect system that may save the Highway Fund a modest amount over time. Thank you.

**SENATOR BARNES:** Senator Below, I heard you say that this was donations from industry that is going to pay for this so there is going to be no cost?

**SENATOR BELOW:** Yes. There is no appropriation involved.

**SENATOR BARNES:** No appropriation involved. All money that is going to come in from somebody that is going to retrofit it for us for nothing?

**SENATOR BELOW:** Yes.

**SENATOR BARNES:** Thank you very much. Are we going to name the rest stop after the people that donate the money?

SENATOR BELOW: Possibly.

SENATOR BARNES: McDonalds Restaurant?

SENATOR BELOW: We do actually have a number of companies involved in New Hampshire that are involved in manufacturing components for the photo voltaic industry, so that is why there is an interest.

SENATOR BARNES: Sounds good.

SENATOR BELOW: Probably in Salem.

SENATOR BARNES: Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 834-L**, relative to River Road and Nimble Hill Road in the town of Newington. Finance Committee. Ought to pass, Vote 6-0. Senator Green for the committee.

SENATOR GREEN: Thank you Mr. President. I move HB 834 ought to pass. This bill would reclassify parts of Nimble Hill Road and River Road in Newington as Class Four highways. There will be a small fiscal impact to the state Highway Fund, but once the roads are reclassified as Class Five highways, the town of Newington would become responsible for the maintenance. Please join me in passing this bill. Thank you.

**Adopted.**

**Ordered to third reading.**

SENATOR GREEN (RULE #44): Mr. President, I would just like to rise to make a comment. I would just like to thank the members of the Senate for being so efficient with us in Finance. We went through a number of bills and you understood that we were all...they were all six to zero. It must have been a good set of bills; however, I hope that this is a feeling of the future that will happen when we do the budget, so that we can go along as quickly as that. We would really appreciate your thoughts about that. Thank you.

SENATOR FLANDERS: I believe this is called the honeymoon.

**HB 302-FN**, relative to the funding and use of the retirement system special account. Insurance Committee. Ought to pass with amendment, Vote 5-0. Senator Flanders for the committee.

**Senate Insurance**

**May 14, 2003**

**2003-1642s**

**10/01**

#### **Amendment to HB 302-FN**

Amend the unnumbered concluding paragraph following 100-A:16, II(h) (7) as inserted by section 1 of the bill by replacing it with the following:

The special account shall be used only to fund or partially fund additional benefits as follows: first, to provide supplemental allowances, or COLAs, pursuant to RSA 100-A:41-a and, second, to the extent that funds may be available in the special account *in excess of a 3-year 5 percent COLA reserve*, to provide additional benefits to retired members and beneficiaries of the retirement system *with the specific approval of the appropriate policy committees and approval of the general court. Nothing in this section shall preclude the appropriate legislative*



*policy committees and the general court from adopting legislation that provides additional benefits in the event that the special account does not contain a 3-year, 5 percent COLA reserve.*

SENATOR FLANDERS: Thank you Mr. President. We move that HB 302 ought to pass with amendment as recommended by the Senate Insurance Committee. This bill is intended to protect a special account within the Retirement System. It clarifies the distinction between the employees of the state of New Hampshire and those hired by political subdivisions within the state. We have all heard about the "gentlemen's agreement". This bill puts the "gentlemen's agreement" into RSA, which will allow all retirement accounts to have a three-year, five percent COLA reserved. The committee believes that the changes enacted in this bill are needed and we recommend the bill ought to pass as amended. Mr. President, we ask that it be sent to Finance.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 316-FN**, relative to insurance coverage for anesthesia for child dental care. Insurance Committee. Ought to pass with amendment, Vote 5-0. Senator Prescott for the committee.

**Insurance**  
**May 15, 2003**  
**2003-1649s**  
**01/09**

#### **Amendment to HB 316-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to insurance coverage for anesthesia for child dental care and establishing an advisory council on mandated health insurance benefits.

Amend the bill by replacing section 5 with the following:

5 New Sections; Advisory Council on Mandated Health Insurance Benefits. Amend RSA 400-A by inserting after section 11 the following new sections:

400-A:11-a Advisory Council on Mandated Health Insurance Benefits.

I. There is hereby established an advisory council on mandated health insurance benefits. The purpose of the council shall be to advise the governor and the general court on the social and financial impact of current and proposed mandated benefits, in the manner set forth in this section and RSA 400-A:11-b – 400-A:11-c.

II. The council shall consist of 16 members:

(a) Ten members shall be appointed by the governor, with the consent of the executive council, including:

- (1) A physician.
- (2) A chief executive officer of a general acute care hospital.
- (3) An allied health professional.
- (4) A representative of small business.
- (5) A representative of a major industry.
- (6) An expert in the field of medical ethics.
- (7) Two representatives of the accident and health insurance industry.

- (8) Two public members.

(b) Two members of the senate, appointed by the senate president.

(c) Two members of the house of representatives, appointed by the speaker of the house of representatives.

(d) The commissioner of insurance and the commissioner of the department of health and human services shall serve as nonvoting members.

III. All members shall be appointed for terms of 4 years each, except that appointments to fill vacancies shall be made for the unexpired terms. No person shall be eligible to serve for or during more than 2 successive 4-year terms; provided, however, that a person appointed to fill a vacancy when less than 2 years remain in the term may serve 2 additional 4-year terms.

IV. The council shall meet regularly, at least once each quarter, and at the request of the governor. A majority of the members shall constitute a quorum.

V. The council shall select a chair and a vice chair from among its members.

VI. Members of the council shall be reimbursed for their necessary expense of travel and subsistence. These expenses shall be a charge upon available funds and the appropriation of the insurance department.

VII. The insurance department and the department of health and human services shall provide staff assistance to the council.

400-A:11-b Duties of the Advisory Council on Mandated Health Insurance Benefits. The advisory council on mandated health insurance benefits shall:

I. Develop and maintain, with the insurance department, a system and program of data collection to assess the impact of mandated benefits, including costs to employers and insurers, impact of treatment, cost savings in the health care system, number of providers and other data as may be appropriate.

II. Advise and assist the insurance department on matters relating to mandated insurance benefits and provider regulations.

III. Prescribe the format, content, and timing of information to be submitted to it in its evaluation and analysis of proposed and existing mandated benefits and providers. Such format, content, and timing requirements shall be binding upon all parties submitting information to the council in its assessment of proposed and existing mandated benefits and providers.

IV. Provide evaluations and analyses of proposed and existing mandated benefits and providers and other studies of mandated benefits and provider issues in accordance with RSA 400-A:11-c.

V. Provide additional information and recommendations, relating to any system of mandated health insurance benefits.

VI. Report annually on its activities to the standing committees of the general court having jurisdiction over insurance by December 1 of each year.

VII. Review and evaluate as necessary the benefits and other provisions of the essential and standard health benefits plans made available in the state, and submit to the insurance department any proposed modifications needed to maintain or enhance the affordability and marketability of the plans.

400-A:11-c Study of Proposed Mandated Benefits and Providers.

I. Except as provided in paragraph II, every bill introduced in the general court containing a mandated health insurance benefit shall be referred by the speaker of the house of representatives or the presi-

dent of the senate, as the case may be, to the council created in RSA 400-A:11-a. The council shall prepare and forward to the governor, the speaker of the house of representatives, and the president of the senate a study that assesses the social and financial impact and the medical efficacy of the proposed mandate. The council shall submit its assessment within 12 months of receiving the referral from the general court. The general court shall not pass any bill containing a new or increased mandated health insurance benefit until the 12-month period has passed.

II. Whenever a bill, as described in paragraph I, is identical or substantially similar to a bill previously reviewed by the council within the 3-year period immediately preceding the then current session of the general court, the speaker of the house of representatives or the president of the senate, as the case may be, may refer the bill to the council to determine whether the council's study needs to be updated or revised. Within 30 days of receiving such a referral, the council shall notify the person who made the referral whether its study needs to be updated or revised. If updates or revisions are necessary, the council shall submit its updated or revised assessment within 6 months of receiving the referral.

III. The council shall also assess the social and financial effects and the medical efficacy of mandated benefits as they exist as of July 1, 2003. The standing committees of the general court having jurisdiction over health insurance matters shall submit a schedule of evaluations to the council setting forth the dates by which particular mandates shall be evaluated by the council with all such evaluations to be completed by December 1, 2004.

#### 6 Effective Date.

I. Section 5 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect January 1, 2004.

**2003-1649s**

### AMENDED ANALYSIS

This bill requires insurers to cover anesthesia provided in conjunction with certain dental procedures for children under 8 years of age. Current law mandates such coverage for children under 4 years of age.

This bill also establishes an advisory council to study and advise relative to mandated insurance benefits.

SENATOR PRESCOTT: Thank you Mr. President. I move ought to pass on HB 316 as the amendment was done by the Insurance Committee. It was very difficult for the Insurance Committee to come up with the cost or the future costs to insurance rates concerning this bill, however, the bill will help a small number of children in New Hampshire who unfortunately suffer from serious debilitation of the teeth, that is so serious that it requires anesthesia in the hospital. When this occurs, the cost of anesthesia can be very expensive, causing parents to forego the needed dental repair. The committee heard a convincing testimony that children up to the age of six should have the anesthesia covered by their insurance. Currently, state law mandates coverage for children up to age four. Because of our struggle over the costs, not knowing what the future costs was going to be to insurance rates, the committee amendment is attached to this bill, which will set up an advisory council of 16 members who will be responsible for looking at all, and I mean all, future insurance related mandates, and reporting to the Governor and legislature on their social and economic impacts. If we had that for this bill,

it would be far easier for us to make a decision concerning extending this coverage. So, in the future, we should have the costs brought to the committee when we see mandate bills coming to the committee. I hope that this happens. The committee believes that this ought to pass with this amendment. Thank you very much Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 596-FN**, relative to health plan loss information. Insurance Committee. Ought to pass, Vote 4-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President. This is a bill that you were so kind to recommit so that we could do it right the second time. We now recommend this ought to pass and it will give loss information on health insurance plans from 50-100 with the daylight of SB 110, this is necessary legislation to help new businesses coming to New Hampshire to learn the loss information on these middle companies. We also have agreed on the two to fifty that there will be a group study this summer, without a study committee, and we will recommend a bill next year on that group from 2-50.

**Adopted.**

**Ordered to third reading.**

**HB 671-FN-A**, establishing a contributory defined benefit judicial retirement plan. Insurance Committee. Ought to pass, Vote 5-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you Mr. President. This is a bill that has had a lot of study put into it as far as retirement. This is for the judicial retirement plan. Basically this is a bill that has to go to Finance to look at it because there is a lot of money involved in it. All of the testimony that we had in Insurance was in favor of it. The committee voted after looking at it, it was a good plan, it should be looked at, so I ask that you pass it and send it to Finance. Thank you.

SENATOR SAPARETO: Thank you Mr. President. Senator Flanders, was also a defined contribution plan ever considered or looked at along with this?

SENATOR FLANDERS: No.

SENATOR SAPARETO: May I ask why?

SENATOR FLANDERS: I didn't study it, I don't know.

SENATOR SAPARETO: Thank you.

SENATOR D'ALLESANDRO: Thank you Mr. President. Senator Flanders, is any judge who has been in this system, under the old system, will they fall under the new plan or will they be held under the old system and from that point on will the judges be in this new system. How is that going to work out?

SENATOR FLANDERS: Just the judges will be in this system. There is a plan in this bill. The new ones will also be in it, they will all be in the state system.

SENATOR D'ALLESANDRO: So that the presently sitting judges will be converted to this system and everybody will be in the new system?

SENATOR FLANDERS: Yes.

SENATOR D'ALLESANDRO: Thank you Mr. President.

SENATOR BOYCE: Senator Flanders, I notice on page 16 that this bill incorporates some nice pay increases for these justices as well.

SENATOR FLANDERS: I believe that what it does is increases their salary based upon the contract that we have with them. In order for them to contribute to this program, we have to give them an increase in salary for them to give back for the payment of their own plan. That is in this bill that will be studied in Finance.

SENATOR BOYCE: And a contribution of \$1 would not have been enough? Thank you.

SENATOR FLANDERS: I did not do the study.

SENATOR LARSEN: I only rise to phrase that we have moved this far with this bill. It has been an issue that has been before the Senate for a long time and if we can get to some agreement on this, I think that we will be the better for it.

SENATOR BARNES: I just want to make the statement that Senator Boyce's in luck because he is on Finance and I am sure he will have a good opportunity to give his input to the Finance Committee and bring it back onto the floor.

SENATOR SAPARETO: Thank you Mr. President. Mr. President, I know that ever since I have served on the Executive Departments and Administration Committee six years ago, we have had a number of these bills regarding judicial retirement and discussion with the House Finance Committee. You know, we keep going to these old fashioned defined benefit plans, which are really great pay, what great deals **TAPE CHANGE** they are for these judges. We keep pushing these things through. Now what we could really use here to start to control some costs, allow affordability and be able to anticipate where our expenses are in the future, and start to look at some of the newer plans. By newer, I am only talking about the things that have occurred since 1974. Now those are fine contribution plans. Many of us may think of them in terms of 401K plans. Why do all of the corporations in the private sectors use 401K plans? Because they are cost-effective, yet we keep putting in defined benefits plans, and I can't help but think of all of the testimony that I hear with the Supreme Court Judges, that push for this type of benefit program which is great for them, but it costs us more money. The reason why they don't want to do this is because the younger judges who are coming into this, don't have much of a say. It is the ones that have been there a long time that want to protect the high pay and we keep pushing these types of programs through, and I, for one, can't support these. This defined benefit plan, such as was described in this, are outdated and they are extremely costly. Now if you want to give them carte blanche, and give them such a large increase in pay, support bills like this. I really can't. We are getting rooked.

SENATOR GATSAS: Thank you Mr. President. I think it is important that we know that there was a study committee that met all summer. Legal counsel came in and explained to us that there is a plan in place right now for judges that you can't put another plan in place and not consider these judges. This plan here has been agreed to by the judges, to move in, so that some of the benefits that they are going to relinquish, and we give them some other benefits, that get them earlier retirement.

I think that it is important to say that this is a bill that I believe, gets us out of the dark ages and gets us into a position that we should be looking at, giving judges an opportunity to retire early and not get burnt out with the system. We can't have two separate plans in the state of New Hampshire. They won't allow it. If we attempt to put another plan in and force the judges to participate, they don't have to. There has been a deal made that they will receive 75 percent of retirement. What this bill does is it grosses them out and makes the ten percent contribution. Right now you can't take the contribution from them and allows for it to go forward. So after a long summer of six or seven people, spending an awful lot of time on this, this is a piece of legislation that we came up with, that I think, is a good compromise.

SENATOR BARNES: Thank you Mr. President. Senator Gatsas can you tell us what the judges gave up? You mentioned the fact that they gave something up. Can you tell us what they gave up?

SENATOR GATSAS: I think that you will find that in here there was disability, is less what their current disability is. The current disability is at 75 percent and I believe this goes to 66 percent. It goes from 75 to 70 as a reduction.

SENATOR BARNES: What else did they give up?

SENATOR GATSAS: That is a good question Senator Barnes.

SENATOR BARNES: Yes, that is a pretty hefty one that they gave us, yes.

SENATOR GATSAS: Well let us understand that they don't have to give up anything. Right now the state of New Hampshire has a \$38 million liability. So we can either...this plan does two things: We fund the liability going forward in year 2024 and it would save the state \$7 million a year. So I guess if we look forward and find a funding mechanism to get rid of the unfunded liability, we could move forward so that in 20 years, the state saves \$7 million a year because we are going to pay for this one way or the other. Right now we are paying for it as you go. There is nothing to fund it.

SENATOR BARNES: Would you believe that I wish that I would be in this chamber 20 years from now so that I could see that happen?

SENATOR GATSAS: Senator, that would mean that you would be real old.

SENATOR BARNES: I am still awake, by golly.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise to speak in favor of the bill. All of us should understand that at the present time, we have accrued liability. We haven't been carrying that on the books properly. As a result of that, we fund that liability on an annual basis. It doesn't make a great deal of sense. We have a number of Superior Court Judges, Supreme Court Judges, District Court Judges, that as they retire, that liability increases. That liability now, is paid direction out of the general fund. There had to be a change. That change had to be an accepted policy. An accepted retirement plan which has to be accepted by the federal government, and it had to be a participatory plan by the existing judges, as well as the new judges coming on. If this weren't done, or if this is not done, our liability as we move forward, becomes enormous. When this package was put together for the judicial branch, their salaries were quite low. When you got a 75 percent retirement, and if you passed away, your wife got a 50 percent retirement, plus you got all of your health benefits. Those were affordable under the old scheme.

They are not affordable under the new scheme and we have to do something. It makes good sense to do this. I applaud the committee. Senator Gatsas and Representative Wheeler spent a great deal of time trying to work this out. We are on a path to cure this situation, but remember, we have that liability in place. If we don't correct it, that liability escalates dramatically. Thank you Mr. President.

SENATOR PETERSON: Thank you Mr. President. I would just like to support moving this bill to Finance. I have been associated with this issue for a number of years myself and understand it and some of its aspects as well. I thank Senator Gatsas on his work on this and do feel that we are at a point now where the issue is clear. It is a fiscal issue. We need to get it to the fiscal committee. I am frankly, unsure whether we are going to be able to move forward and be able to afford to move forward on this bill, but I think that it is very much worth looking at. It costs money and yet it does away with the major unfunded liability which we carry if we do not move forward with a plan such as this. There are a number of benefits of moving forward to a contributory plan, which I think that we should take into account. Thank you.

SENATOR SAPARETO: Thank you Mr. President. I am not saying that this isn't better than what we have right now to fund liabilities, but to say that we can't go on and move up to the 21<sup>st</sup> century is ridiculous. The federal employee retirement system, the first plan, there was a lot of our postal workers and other federal government workers, was upgraded about 12-15 years ago. As a result, the federal government saved a lot of money when they did that and they also came up with enhanced benefits for all of the countries employees. We can do the same thing. It is not illegal. It is not disallowed. You can do it. Most major corporations from AT & T or any of the other ones, for years, always had to find benefit plans that existed in pension since the beginning of the last century. What happened was that after the ERISA act, they allowed for defined contributions' plans. They were able to save into them. So they are allowed to phase into new plans. All that I am saying is that we keep looking at going back and trying to fix the old carriage and horse when we really need a good modern car. When you can get with a defined contribution plan, it gives out benefits that allows us to determine what our expenses are going to be. And we are going to see that right away because this money comes out of the general fund. We all know that we fund the judges from the general fund, so it is easy to upgrade some of these plans with a simple, optional, defined contribution plan at first to start these up. Some judges will participate with their own money. That saves the state money and provides a better benefit plan for incoming judges and younger judges. The old ones get fat off of the nice big fat defined benefit plans that they like and we keep giving them the money; however, we are not going into...we are not looking at ways that we can enhance the program, save us money by locking in costs and taking advantage of the long-term gains, market gains that younger judges can get. We don't even bother to look at that. After six years, I have been looking at the defined benefit plans, these old buggy plans that we keep trying to fix up. These are costly. These cost us a lot of money. I don't know why we don't look at some of these new programs. I am saying new, they are 30 years old. But we don't even bother to go through that. I am hoping that at least to get them to the Finance Committee and will look at some of the other options with this or at least speak with Governor Benson who is very familiar with defined contribution plans. There are

lots of things that we could do to make this system a lot better and save us a ton of money, if we just had the effort and stop avoiding something that was new. Thank you Mr. President.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 684-FN**, relative to the insurance rating law. Insurance Committee. Ought to pass, Vote 4-0. Senator Roberge for the committee.

**SENATOR ROBERGE:** Thank you Mr. President. I move that HB 684 ought to pass as was recommended by the Senate Committee on Insurance. This bill was requested by the Insurance Department and simply makes some technical changes aimed at addressing "Seed to market concerns" while still fostering a competitive marketplace and providing necessary consumer protection. The committee passed this bill 4-0 and recommend it ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 702-FN**, relative to payment of medical benefits costs for disabled group II members of the retirement system. Insurance Committee. Ought to pass with amendment, Vote 5-0. Senator Prescott for the committee.

**Insurance**

**May 15, 2003**

**2003-1643s**

**10/03**

### **Amendment to HB 702-FN**

Amend the bill by replacing section 1 with the following:

1 Group II Disabled Members; Permanent Firemen; Medical Benefits; Application. Amend RSA 100-A:55, I to read as follows:

I. The additional benefits provided under RSA 100-A:52 shall apply to persons who are active or retired members of group II as of June 30, 2000; to persons who prior to July 1, 1988, had completed no less than 20 years of group II creditable service, but who for reasons other than retirement or death ceased to be a group II member prior to attaining the age of 45, and who, as of July 1, 1993, are eligible for vested deferred retirement benefits; and to persons who are group II permanent policemen or permanent firemen members on disability retirement as the natural and proximate result of injuries suffered while in the performance of duty who become permanent policemen members of group II before July 1, 2003 or permanent firemen members of group II before July 1, ~~2003~~ 2004. Such additional benefits shall not apply to other persons who become members of group II after the dates stated in this paragraph, without future legislation to include them. It is the intent of the legislature that future group II members shall be included only if the total cost of such inclusion can be funded by reimbursement from the special account established under RSA 100-A:16, II(h).

**2003-1643s**

### **AMENDED ANALYSIS**

This bill extends the year of eligibility of group II disabled permanent firemen members for the payment of medical benefits costs by the retirement system.

**SENATOR PRESCOTT:** Thank you Mr. President. The committee voted 5-0. Did not amend it. It came through the House. We think it is good.



Hope the Senate passes it. Thank you very much. There is an amendment. Sorry Mr. President. We like the amendment in the committee. We voted it 5-0 and we hope you pass it. Thank you.

SENATOR SAPARETO: Thank you Mr. President. Will this be sent to Finance?

SENATOR EATON (In the Chair): No, it will not because it just came from Finance. No, I am sorry. This will not be going to Finance though.

SENATOR SAPARETO: Thank you Mr. President...

**In recess.**

**Out of recess.**

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 788-FN-A**, transferring the duties of the health services planning and review board. Insurance Committee. Inexpedient to legislate, Vote 3-2. Senator Prescott for the committee.

SENATOR PRESCOTT: Thank you Mr. President. The committee recommends inexpedient to legislate. I am glad to make that recommendation and hope that the full Senate concurs.

SENATOR ROBERGE: Mr. President, I was one of the two who voted against the inexpedient to legislate motion. I think that we should transfer the CON Board to the Department of Health and Human Services. I think that our ambulatory care facilities perform a very useful function to the consumer. A small guy. We are always talking about how we should be trying to save money on health care. This is a very good way to save money on health care, and I think we should be supporting them instead of supporting the big hospitals. This is a big hospital bill. It supports the big hospitals. As far as I am concerned, over the years and right now, they make plenty of money and they don't need this extra support. Thank you.

SENATOR SAPARETO: Thank you Mr. President. Mr. President, I rise in opposition to the committee report. The CON Board drives our costs up. I visited Arizona recently where my brother happens to head an oncology department for the University of Arizona, and I talked to two clinic operators who were in this. They have no CON Board down in Arizona and they have superior, they have state of the art medical facilities. They provide these services at a fraction of the cost that we have here. One reason that they have it is they said that they don't have a CON Board. These are people that supported their CON Boards prior to the deregulation out there and now they do not have a CON Board and they said that they were wrong. That they should not have opposed the elimination of the CON Board in that state. We have the same thing here and this is what drives our health care costs up. I don't know why we continue to have oversight in this board. You have the foxes guarding the hen house here, in this plan. Look who makes up those boards, and then they wonder why we have such high medical costs. I will oppose this bill.

SENATOR FLANDERS: Thank you Mr. President. What we have here is two bills that try to do the same thing. We have a Senate position which is SB 163, which is presently in the House. That has been amended

to read most of 788. I don't think that we ought to send two CON bills to the House like they sent us two budgets. I ask that you inexpedient to legislate this. We will go to Committee of Conference on 163 and we will be able to solve whatever problems that we have got. If we pass this, there is just going to be more confusion, so I ask that this be inexpedient to legislate, and we can work on the Senate version that we sent to the House. Thank you.

SENATOR PRESCOTT: Thank you Mr. President. The idea that the CON is the fox guarding the hen house, I would like to give an example that contradicts that response. The area that I live in, down at the seacoast, wanted to have a cancer treatment center. A couple of hospitals wanted a cancer treatment center and one hospital didn't. They went to the CON Board and they found in favor of the hospital that didn't because there was no data to support the need for a cancer center. So two years later they went back and said we now think that we now have more data to support the need for a cancer treatment center. In fact, now the three hospitals concur that we need a cancer treatment center, and now there will be a cancer treatment center in the seacoast. I think that the CON does their job by keeping checks and balances on what the needs of the community are. The second thing that they do: They protect the community hospital. The community hospital is the one that holds the bag for all of the emergency care for anyone that walks in the door. It is federally mandated that they must hold the bill. Maybe they can collect it, maybe they can't. They will have to write it off. I am in favor of competition. If we shared the competition in the industry, if the industry shared the responsibility of the community care that the hospital takes 100 percent of now, if they could find a way that is, the competition could come in and take part of that...if they take a part of the market share, they should take part of the responsibility; therefore, I do wish that the CON continue. It needs to be adjusted of course, as any board needs to be looked at. I can always look at that, but just to outright eliminate them is a drastic step in the wrong direction. We want to protect our community hospitals. We want to protect those people to be able to walk into that emergency room and get care. I think that is a public trust that we need to maintain.

SENATOR ROBERGE: I have some rather late breaking news. As it happens, that SB 163 is probably going to die in House Finance. If we don't pass this bill, we will not have a vehicle. I want to make that amply clear. I don't think that was made clear, but it is true now. I heard that from the sponsor about an hour ago.

SENATOR CLEGG: Thank you Mr. President. That is news to me because SB 163 has been amended, to my knowledge, to be HB 788. So if they're over there killing HB 788 as it was amended onto 163, then I guess I wouldn't send them back HB 788. I would amend 788 here with 163. But, the Senate has a position. If this bill dies, I think that Neal Kurk will understand, as Chairman of Finance, that there needs to be a meeting of the minds between the House and the Senate, and the proper way to do it is in a Committee of Conference. While I agree that there needs to be something done with the CON, HB 788 doesn't do it properly. Again, I will state that we need to sit down, just like we did on the loss of opportunity, and force the parties to get at a table and come to a reasonable compromise. I will be supporting the inexpedient to legislate and speaking to Neal Kurk tomorrow to let him know that that is the only bill left.

**MOTION TO TABLE**

Senator Sapareto moved to have **HB 788-FN-A** laid on the table.

**Motion failed.**

**Question is on the committee report of inexpedient to legislate.**

**Committee report of inexpedient to legislate is adopted.**

**Senators Martel and Roberge are in opposition to the motion of inexpedient to legislate on HB 788-FN-A.**

**HB 364-FN**, relative to the use of automatic telephone dialing systems for political advocacy. Internal Affairs Committee. Ought to pass, Vote 2-1. Senator O'Hearn for the committee.

**MOTION TO TABLE**

Senator O'Hearn moved to have **HB 364-FN** laid on the table.

**Adopted.**

**LAIID ON THE TABLE**

**HB 364-FN**, relative to the use of automatic telephone dialing systems for political advocacy.

**HB 577-FN-A-L**, relative to implementing the Help America Vote Act of 2002 and relative to rulemaking by the secretary of state. Internal Affairs Committee. Ought to pass with amendment, Vote 3-0. Senator Boyce for the committee.

**Internal Affairs**

**May 15, 2003**

**2003-1638s**

**03/09**

**Amendment to HB 577-FN-A-LOCAL**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to implementing the Help America Vote Act of 2002.

Amend the bill by deleting section 3 and renumbering the original sections 4-12 to read as 3-11, respectively.

Amend RSA 654:45, II as inserted by section 3 of the bill by replacing it with the following:

II. Any election official in the state authorized by this chapter to have direct access to the voter database may obtain immediate electronic access to the information contained in the voter database related to individuals registered or registering to vote in the election official's jurisdiction. The office of the clerk is hereby designated as a database access point for each town or city. The secretary of state may authorize additional database access points in a town or city, including election day access points at polling places.

Amend RSA 654:45, IV(b) as inserted by section 3 of the bill by replacing it with the following:

(b) Voter database record data shall be verified by matching the records with those of the department of safety and the federal social security administration as are required by law, and with the records of the state agency or division charged with maintaining vital records. For this purpose the voter registration record database may be linked to the state agency or division charged with maintaining vital records and the department of safety, provided that no linked agency or division may save or retain voter information or use it for purposes other than veri-

fyng the accuracy of the information contained in the voter database. The link authorized by this subparagraph shall not allow the department of state or election officials direct access to the motor vehicle registration or driver's license records maintained by the division of motor vehicles. The commissioner of safety may authorize the release of information from motor vehicle registration and driver's license records to the extent that the information is necessary to department of state and department of safety cooperation in a joint notification to individuals of apparent discrepancies in their records and to the extent that the information is necessary to resolve those discrepancies. The commissioner of safety and the secretary of state are authorized to enter into an agreement that establishes the services to be provided by the department of safety and the cost for those services. The department of safety shall not be required to provide any services under this subparagraph unless an agreement is in place and there are sufficient funds in the election fund to pay the cost for the services. The system shall facilitate the identification and correction of voter registration records whenever a registered voter has died or has been disenfranchised pursuant to part I, article 11 of the New Hampshire constitution or RSA 654:5 through RSA 654:6, or when the domicile address does not match the address provided by the same individual to the department of safety.

(c) Access by local election officials to the voter database shall be limited to the supervisors of the checklist, city registrars and deputy registrars, and town or city clerks and their deputies, as determined by the secretary of state. Access by local election officials shall be subject to the limitations of paragraph VI, and shall be limited to the records of individuals who are currently registered to vote in the official's jurisdiction and individuals who are applying to register to vote in the official's jurisdiction.

Amend RSA 654:45, V as inserted by section 3 of the bill by replacing it with the following:

V. The secretary of state shall:

(a) Specify the employees of the department of state authorized to access records contained in the voter database, subject to the limitations of paragraph VI.

(b) Provide adequate technological security measures to deter unauthorized access to the records contained in the voter database.

(c) Issue guidelines to implement the voter database.

Amend the bill by replacing all after section 10 with the following:

11 New Section; Ballot Law Commission; Administrative Complaint Resolution. Amend RSA 665 by inserting after section 9 the following new section:

665:9-a Administrative Complaint Resolution. The ballot law commission shall hear and resolve complaints of federal voting law violations, pursuant to the Help America Vote Act of 2002, Public Law 107-252, as provided in RSA 666:14.

12 Contingency. If HB 693-FN of the 2003 regular session becomes law, section 11 of this act shall take effect at 12:01 a.m. on the effective date of HB 693-FN. If HB 693-FN of the 2003 regular session does not become law, section 11 of this act shall not take effect.

13 Effective Date.

I. Section 11 of this act shall take effect as provided in section 12 of this act.

II. The remainder of this act shall take effect upon its passage.

2003-1638s

## AMENDED ANALYSIS

This bill:

I. Establishes an election fund for moneys appropriated to the state pursuant to the Help America Vote Act of 2002 and requires that certain fees and fines be deposited in the fund.

II. Authorizes a statewide centralized voter registration database and communications network.

SENATOR BOYCE: Thank you Mr. President. I move that HB 577 ought to pass as amended. The House Bill establishes an election fund for the monies which are appropriated to the state from the federal government under the Help American Vote Act of 2002. This is the centerpiece of that legislation and allows us to actually start using the money. The funds will be used to purchase equipment that is mandatory under HAVA and to train all election personnel and to establish a centralized voter registry. The committee amendment is necessary in order to correct certain concerns in the bill as passed by the House. The Internal Affairs Committee thanks you for your support. Thank you.

SENATOR ESTABROOK: Thank you Mr. President. Senator Boyce, Roman III in the analysis says that the bill "exempts guidelines or rules issued by the Secretary of State in executing and enforcing the election laws from rulemaking requirements." Where is that in the bill?

SENATOR BOYCE: Right. Oh gosh. We have taken it out in the committee amendment.

SENATOR ESTABROOK: Oh you have?

SENATOR BOYCE: Yes.

SENATOR ESTABROOK: Thank you very much. That was the piece that concerned me.

SENATOR BOYCE: The Secretary of State doesn't like to have to do things through JLCAR, he much prefers legislation, so that was his request actually.

SENATOR ESTABROOK: But you say that the amended version does not contain that provision?

SENATOR BOYCE: It is at the bottom of page 17. It simply removes the section that had that in it. It renumbers the other sections.

SENATOR ESTABROOK: Thank you. Thank the committee for doing that.

SENATOR GATSAS: Why are we eliminating one agency in the state from having to go to JLCAR?

SENATOR BOYCE: The Secretary of State much prefers to have things spelled out in legislation when he does things. So what he has asked is, don't give him rulemaking authority, make him come back to the legislature to get the things done through legislation, so that when he goes and says this is how we are doing something because of the election laws, he can go to the RSA and say this is where it says in the RSA's that I have to do it this way. He much prefers that to having the rules, which people from the other states have trouble finding because they are stacked on a shelf somewhere and not shown on the website. At least that is my perspective.

SENATOR GATSAS: Okay, now it is clear.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 605-FN**, relative to prohibited election day activity. Internal Affairs Committee. Ought to pass with amendment, Vote 3-0. Senator Boyce for the committee.

**Internal Affairs**

**May 14, 2003**

**2003-1639s**

**03/09**

### **Amendment to HB 605-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to prohibited election day activity and relative to electioneering by public employees.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Election Procedure; Prohibited Acts; Interference With Communications. Amend RSA 659 by inserting after section 40 the following new section:

659:40-a Interference With Communications. Any person who, on the day of any election, knowingly blocks, or solicits another person to block, the access of any candidate or committee to the candidate's or the committee's communications equipment or services with the intent of interfering with campaign activity shall be guilty of a class A misdemeanor.

2 New Section; Electioneering by Public Employees. Amend RSA 659 by inserting after section 44 the following new section:

659:44-a Electioneering by Public Employees. No public employee, as defined in RSA 273-A:1, IX, shall electioneer while in the performance of his or her official duties or use government property, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering. For the purposes of this section, "electioneer" means to act in any way specifically designed to influence the vote of a voter on any question or office. Any person who violates this section shall be guilty of a misdemeanor.

3 Effective Date. This act shall take effect upon its passage.

**2003-1639s**

### **AMENDED ANALYSIS**

This bill prohibits blocking the access of any candidate or committee to communications equipment or services on election day. This bill also prohibits public employees from electioneering while in the performance of their official duties or using government property for electioneering.

SENATOR BOYCE: Thank you Mr. President. I move that HB 605 ought to pass with amendment. This bill deals with the prohibition of blocking the access of a candidate or a committee to communications equipment and services. The committee amendment, the first part of the committee amendment, was necessary because the way that the bill was written when it came from the House, it could have allowed a candidate

to walk up to the voting, the polling place, and demand that he be able to use the telephone in the polling place, and could not be prevented. It was written backwards. It said that you couldn't prevent a candidate from using a telephone, is what it basically said. What we have amended it to say is that you can't prevent a candidate from using his own telephone. In other words, you can't block access...you can't tie up his phone so that he can't make phone calls out or in, and you can't do that to his committee either. So we switched it around because it originally said that your opponent could walk up to you and say give me your cell phone I want to use it and you couldn't prevent it. So we thought that we would change that. We also added to the bill, that public employees shall not be allowed to electioneer while in the performance of his or her official duties, and they also can't use publicly owned fax machines, computers, equipment or whatever in doing that electioneering. Thank you.

SENATOR BELOW: Thank you. I think that this is a question. It seems like this section two is very well intended, but, what I was wondering about is have you thought about the situation where a public employee has a duty, under the law, to try and influence the vote of a voter on a question. I will give you the example and you can respond whether this came up. Our city charter in the city of Lebanon, requires the city council and the planning board to take a position to make a recommendation to the voters on certain zoning changes, so that they say the city council recommends or does not recommend this change. So obviously the charters...in fact, our council didn't want to do this and they concluded that they had to do it under the charter. So public employees were directed to make known, and to use city, public, governmental property for which to me, looks like it would be an act specifically designed to influence the vote of a voter on a question. And they used government property because they had to do it. It was their obligation to publicize this recommendation. Did that question come up at all?

SENATOR BOYCE: It did not. It sounds to me like there is a flaw in the charter and that the charter is probably the problem. I can't imagine why any public employee ought to be trying to convince a voter to do anything one way or the other on something that they would be voting on.

SENATOR FOSTER: I think that I have my answer but I just want to make sure that this was the intention of the committee. The intention of the committee was to cover all public employees, not just state employees? We are talking about towns, subdivisions, councils, commissions and anybody working in any way related to any governmental function?

SENATOR BOYCE: Yes.

SENATOR BOYCE: Thank you.

SENATOR BARNES: Senator Below, would you believe that I don't think that the employees that are there to tell people how to vote. In my town, the planning board has boards and what have you, to explain to the voters as they come in to vote, if they have any questions. What does this mean...what does that mean...they are not there to say we want you to vote for this, we want you to vote for that, it is strictly an informational type situation.

SENATOR BELOW: I believe that. Yes.

SENATOR BARNES: So why do you have a problem up there. Aren't those people up there doing the same thing in your town or your city? Aren't they giving information?

SENATOR BELOW: No, it is more than information. We actually have a charter requirement that certain zoning changes that they have a recommendation, which I think the recommendation can be construed as trying to influence the vote of a voter, of the Conservation Commission, the Planning Board and the City Council. In fact, we had on the ballot recently, a question, and there were different recommendations. The Conservation Commission recommended one way and the City Council people voted a different way. The city manager is a public employee, as part of his official duties, had to use the city resources to make it known that this was a position that was urging people to vote one way or the other on the ballot. It isn't my idea, but I am just concerned with the...

SENATOR BARNES: I question it because in the towns, probably every town in the state, when there is something on the article, the school board recommends or doesn't recommend it. The budget committee recommends or doesn't recommend, Christ, half the time when they recommend, the voters go the other way.

SENATOR BELOW: Sure.

SENATOR BARNES: The same thing that you are talking about, they are recommending, but it doesn't mean that they agree with it. The school board could vote 3 to 2 which could happen. Which happened this past year on an item and the darn thing goes on the ballot. It doesn't go on 3 to 2, it goes on as the school board recommends. Then you've got to get up and make your speech. I don't understand why that is a problem up there.

SENATOR BELOW: I hope it's not.

SENATOR FLANDERS: My only comment Mr. President is that every town warrant is recommended by the board of selectmen, recommended by the planning board and not recommended by, and I don't think it is a problem, because I think that every town warrant has it.

SENATOR BELOW: Senator Flanders, so you are saying that it is not the intent of this to create a problem or to put people in a situation of being guilty of a misdemeanor when they are carrying out a traditional practice where a budget committee or a board traditionally makes a recommendation saying that the board or the committee recommends this article or doesn't...recommends against this article?

SENATOR FLANDERS: There certainly was no testimony to that intent at the time of the hearing and not our intent when we passed it that that would be the case.

SENATOR BELOW: Okay, thank you.

SENATOR CLEGG: Thank you Mr. President. I understand that in our town too, our boards are supposed to make recommendations and take a stand. I will tell you that nothing aggravates me more than to watch our public employees use the town money, town facilities, town vehicle to campaign against me.

SENATOR BARNES: Obviously it doesn't work so keep it up.

SENATOR CLEGG: That is right. So it was a waste of taxpayers money. But basically what we are saying is, that if you believe in something, you should go out and do it on your time, with your money, not with taxpayers money. How many times have we all heard complaints about a public employee sitting in somebody's office, using the telephone to get enough votes for somebody for some issue? You are on the other side of the issue and you are paying for it, only you can't afford to pay for somebody to do



it for your side, but with taxpayers money, they can. Now if your charter demands that your town official use certain materials to advocate for one side of a town issue, well then I guess that this law cannot stop you. But I will tell you, if I was living in your town, I sure would want to change that charter. All that we are trying to do is stop public money from being used for private purpose. I am in support of the amendment. Thank you.

SENATOR BELOW: Senator Clegg, in your community, do you have budget committees that take a position on the budget that says that they recommend or that they don't recommend this budget?

SENATOR CLEGG: Absolutely, but they are not allowed to send out letters. They don't hold signs, they don't use the machines to go influence people one way or the other.

SENATOR BELOW: I agree, nor should they, but do they...does the fact that they recommend or not recommend a particular warrant article, is it somebody's job to make that known, to print that on the agenda for the meeting or something like that?

SENATOR CLEGG: Well I think that when you have an agenda for a meeting, and you have somebody that has to print that, I don't think that somebody using materials is electioneering. Let me also read that the 273:A-1, IX, a public employee means, "Any person employed by a public employer except persons elected by popular vote. Persons appointed to office by chief executive or legislative body of the public employer" so your town manager would be exempt, "persons whose duties imply a confidential relationship to the public employer or persons in a probationary or temporary status." So the people that we have heard about so far would be exempt anyway.

SENATOR BELOW: Okay. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 606**, establishing a right-to-know study commission. Internal Affairs Committee. Ought to pass with amendment, Vote 3-0. Senator Flanders for the committee.

**Internal Affairs**

**May 14, 2003**

**2003-1644s**

**01/09**

### **Amendment to HB 606**

Amend the title of the bill by replacing it with the following:

AN ACT establishing a right-to-know study commission and relative to meetings open to the public.

Amend paragraph I of section 3 of the bill by inserting after subparagraph (g) the following new subparagraph:

(h) The attorney general, or designee.

Amend the bill by replacing all after section 6 with the following:

7 Meetings Open to the Public; Certain Caucuses Not Meetings. Amend RSA 91-A:2, I(b) and (c) to read as follows:

(b) Strategy or negotiations with respect to collective bargaining; [or]

(c) Consultation with legal counsel; *or*

*(d) A caucus by the members of a public body whose members were elected on a partisan basis at a state general election or elected on a partisan basis by a town which has adopted a partisan ballot system pursuant to RSA 669:12.*

8 Effective Date. This act shall take effect upon its passage.

2003-1644s

#### AMENDED ANALYSIS

This bill establishes a commission to study the right-to-know law, including the issue of electronic communications.

This bill also declares that certain caucuses by members of a public body are not meetings under the right-to-know law.

SENATOR FLANDERS: Thank you Mr. President. I move HB 606 ought to pass with amendment. House Bill 606 establishes a right-to-know study commission. This needed commission will address the often-asked questions regarding e-mails, teleconferences and other communications and under what circumstances these electronic communications are subject to right-to-know. The committee amendment clarifies what has long been an accepted practice: that a partisan caucus is not a public meeting. Party caucuses have not been public meetings since the Right-To-Know statute was enacted in 1967. The amendment clarifies current statute and maintains the status quo. The Internal Affairs Committee asks your support for the bill as amended. Thank you.

SENATOR BELOW: Senator Flanders, did this amendment...section seven of the amendment, to say that partisan caucus' are not meetings, did that issue get presented at the public hearing or did this amendment get a public hearing?

SENATOR FLANDERS: Yes. It was at the time of the hearing, yes.

SENATOR BELOW: You are saying that this amendment was presented at the public hearing?

SENATOR FLANDERS: Yes or it wouldn't have been printed in here.

SENATOR BELOW: Versus the executive session on the bill?

SENATOR FLANDERS: I don't know. I thought that it was at the meeting. I can check my records.

SENATOR BELOW: Well I read the public hearing report and there is absolutely no reference to an amendment being presented...

SENATOR FLANDERS: Then I will take your word for it and say no.

SENATOR BELOW: Or this issue coming up at all. It simply wasn't referenced in the public hearing report.

SENATOR FLANDERS: I will take your word for it and say no.

SENATOR BELOW: Okay.

SENATOR LARSEN: I rise to oppose the amendment to HB 606. The hearing report in fact, does not mention that there was a discussion or any hearing of any sort relating to the addition of listings of meetings that are not considered open to the public. Adding a caucus as one. It is unfortunate that as the day gets darker, we are debating what is important to a fair democracy in our state. The right-to-know law is a sunshine law. As this day gets darker, I am afraid that our democracy gets a little darker. This amendment, I am concerned, is a step backward. It is a step

backward from the law which was passed back in the 1970's and has been one under which all of us have operated proudly. The preamble of that law said openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest public access to the actions, discussions and records of all public bodies and their accountability to the people. How do people know why we are deciding things if we do not put them on record. I have been in this group for nine years. I have seen in fact, less and less public debate. Today is a good exception. Today we have had good open debate on a lot of issues, but too often, we have had the discussion, the important discussion of public business, go in not just in early causes where we decide what bills are going to have amendments, but in fact, discussions in closed caucus off where no one can hear what the discussion is, but in fact, the doors are closed and it is during our deliberative session. How does anyone ever check a record of why we decided something? If it is ever challenged in court, they use our debates for those challenges. How do they know legislative intent if no intent is shown? Debate in a democratic society is one of the most healthy things that you can have. People understand why you stand for what you do. People understand why you vote no, why you vote yes, if you talk about it. But we have had more and more encouragement to not talk about it, let's just get this business over with. Let's run back in closed doors and talk amongst ourselves, come out and vote. It is not good for democracy. This in fact, this amendment, which I regret that I was not able to cast a vote against, I was in Public Affairs, I came over during the executive session, left Public Affairs discussion, ran to Internal Affairs discussion, arrived during the executive session and was not able to cast a vote on the bills that had gone before I arrived. But this amendment, which I was not aware of, did not have a hearing and it adds a caucus by members of a public body, whose members were elected on a partisan basis. Both at a state general election, so that includes us and county commissioners. But it also added those who are elected on a partisan basis by a town. It is so broad that we need to talk about this more. It was an amendment which was added quickly without a full discussion. Without full hearing, without public awareness until very late. It needs a little sunshine. We need to discuss when a caucus is right. Is a caucus right that we go in the middle of a deliberative session, discuss all of our concerns with the bill behind closed doors and come out and vote. Is that the right way? Is that good for our democracy? Is that good for people understanding why we are voting the way that we are? We need to discuss those things. You will see later, a floor amendment which I have which suggests that we study how we define a caucus and when it should be closed. I am not saying...and I am sure that all of you recognize, that there are times when a caucus is critical, important and useful for people to have a discussion, but not if it is on the beat of the public debate that results in the public debate being behind closed doors instead of out in the full light of day. I urge you to think about this. We are discussing the amendment. When the time is appropriate, I will ask to bring a floor amendment to say let's look at how we define a caucus. Let's not rush into this committee amendment as printed on page 20 in the Calendar. I urge you to think about this. I think that it is critically important. We have heard from many members of the public and there has been more attention recently about this, but it is an important issue. One which, I think, all of us ought to be free and willing to stand up and say what we believe out in the light of day. Thank you.

SENATOR SAPARETO: Thank you Mr. President. Senator Larsen, I recall in my second term across the other side of that wall. This body here was the majority, had 13 Democrats here. Did the press ever attend the caucus meetings in there at that time?

SENATOR LARSEN: We didn't tend to break. We didn't break and go into the closed chambers to discuss public issues, is my recollection. There were times when there would be a recess to say what does this amendment do perhaps, but I don't recall. I am not saying that one body is more guilty than the other. I am only saying that this is an important precedence to put into law, and that we ought to perhaps think about it for a year before we do it so broadly as to permit all discussion to go on behind closed doors, including a county commission that perhaps is all members of one party. They would never, for example, have to have a public discussion if they didn't want to. They could decide all of their issues and say we are in caucus, we don't need to tell you why we decided what we did.

SENATOR SAPARETO: Thank you Mr. President. Would you believe that I recall meetings on the third floor on the other side, speaking with a certain reporter on the first floor, they would have loved to have attended in the caucus but informed me how he wasn't allowed in. So I just kind of thought that was...pointing that was about five years ago.

SENATOR LARSEN: And as I responded, a caucus that is held prior to a public debate may be different then a caucus that is held during deliberative session. **TAPE CHANGE** here in this amendment. We need to talk about what is right. We need to have the public talk about that with us. We need to have a full discussion on that and not just run this through, as basically, a surprise amendment to many people.

SENATOR SAPARETO: Thank you.

SENATOR BARNES: Thank you Mr. President. I have a couple of questions for you Senator Larsen. Do you folks in your democratic caucus have the press come in? Do you now invite the press into your caucus?

SENATOR LARSEN: I think that you will see that our caucuses are oftentimes in a corner, where anyone who is sitting nearby or...

SENATOR BARNES: No, I am not talking here, I am talking before the session. Do you invite the press into your caucus?

SENATOR LARSEN: I think that if the press asked to come into our caucus, they might very well be able to do that, but my point was, there are very many different caucuses and different reasons for caucuss. A caucus held before deliberative session prior to that is different than a caucus which is held when you are debating public issues, you are in the midst of debating public issues and you...not only do you caucus, but you do not discuss what you...in any depth, why you decided what you decided in public.

SENATOR BARNES: My second question. How do you define the recesses that we often take here in the Chamber? Is that something that we should allow the...the press should be allowed to come into? Your amendment is going to say that when we have a...when we call for a five minute or a three minute recess, that the press should come into the room with us?

SENATOR LARSEN: My point is that we don't, right now, have any definition of when it is the right...when it is acceptable to recess or caucus, during deliberative session, prior to session, there has been no debate on

this and we are doing it now, but a recess for the purpose of understanding how a motion works, might be different than a recess for the purpose of everyone going back and deciding that they are going to hash it out, quietly in back so that the public doesn't see that there is disagreement. Those are different kinds of reasons. That is the very reason why we need to put a little skids on this and slow it down so that we can in fact, discuss it, when is it appropriate and when is it not.

SENATOR BARNES: Thank you. Would you believe that I hate the perception that we do things in closed rooms. I hear it from my constituents all of the time. "Oh you guys do it in smoke filled rooms". You know, that is the old day television in the movies, the guys with the cigars smoking and making all of those heavy-duty deals. But I have got to tell you, I don't think the press should be in on our recesses, because what we do in recess and I am sure what you folks do in recess, the press is here to hear what we do in recess when we come back out here. What we do back there is discussed here. I don't think that I need the press up there, and I don't think that it is anything hidden, but I think that if I have a concern with the piece of legislation that is coming up, and I want to let my colleagues know where I am coming from, in case I am the only one feeling that way, I think that I would like to have the privacy to be able to say to the people in my party, "hey, I think that you guys stink. I think that you are going up the wrong road." I don't need the press there to say "Jack Barnes says that the republican Senators are a bunch of poop heads because they don't agree with him." And that sometimes happens in a caucus. It probably happens in yours, too. Probably when Junie was here, it probably happened quite often.

SENATOR LARSEN: Not very often.

SENATOR BARNES: So you have to be careful of that stuff.

SENATOR LARSEN: I agree. I agree. And that is why I say that we need to define when it is appropriate to have a caucus and when it is appropriate to continue what is our standard of open meeting laws.

SENATOR BARNES: Senator Larsen, God Bless you, but, okay, I will let it go, it is getting late. And your husband wants to get us all in before it gets too dark, I know.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise in opposition to the amendment. I hate to keep saying this, but I guess I am the oldest one around here but, I was here when we followed the Florida Sunshine Laws and we adopted the right-to-know laws. One of the reasons why we adopted the right-to-know laws is because there were things taking place in this legislature that people weren't aware of. In an attempt to open the legislative process, we adopted the Florida model, which at that time was the Sunshine law. It brought great light into these halls, both on the House side and the Senate side. Now times have changed, obviously. We have gone through a period of change. That period is over 30 years. So when change is appropriate, we are to look at change, study change, and then make decisions as to what changes should be made and should they be brought in on an incremental basis? That involved input. Input from the public. Input from us. That input should not take place in the debate format here, but it should take place in some kind of a public hearing. That is what I am concerned about. I have served on local boards. The one thing that we are very conscious of at the local level is the right-to-know law. We bring attorneys in to give us the best information possible about that. I served on a 14 member board, as a mem-

ber of the Manchester School Board. We were very conscious of letting the public know what we were doing. We were carrying out the public's business. It was very important to us and we go as far as to have our meetings televised or when I was on that board. So I think that it is imperative that if we are going to make change, and this change not only effects us but it effects towns. We ought to debate that issue. We ought to have some public input and then move forward, and we ought to move forward on an incremental basis, because the one thing that I think that we want the public to perceive, that perception is reality, that this is an open situation. That what we say here is on the public record. I know that the public record is something that is looked at over and over again. Decisions that we make here go into the legislative intent. That legislative intent is very, very significant in the application of the laws that we pass, so we ought to be very conscious of that. None of us are afraid of openness. We like openness. I mean that is why we ran for public office. It just seems to me that we ought to look at this more carefully before we make that decision. Thank you Mr. President.

SENATOR FOSTER: Thank you Mr. President. I just wanted to point something out to the members here. Back in the House, I think it was Representative Mirski, used to pull out the New Hampshire Constitution. You know, you study the U.S. Constitution in law school, but not the New Hampshire Constitution very much, your state constitution. I always like to look at this and just as a matter of interest, I think that it is Part II, Article 8. It says, "the doors of the galleries, of each house of the legislature, shall be open to all persons who behave decently except when the welfare of the state, in the opinion of either branch, shall require secrecy." Adopted September 5, 1792. I think that maybe tells us that when we are here, this place is intended to be open unless there is a critical reason that it not be open. That could suggest that caucuses before or caucuses after are different than the time that we are here, unless secrecy is required. I am not sure that it necessarily answers the question, but I think that what it does suggest is that we ought to think about this a little bit more, it is in our state Constitution. Thank you.

SENATOR PRESCOTT: Thank you Mr. President. I would like to say that with the opinion of the Senate, caucuses are legitimate as it says in our rule book. We all know Maura Carroll is the person who represents the Municipal Association. The Municipal Association has never considered a caucus of partisan people to be subject to right-to-know, and there is a municipal association. In fact, they are using the caucus to get around the right-to-know law, then yes, they would be upset with that. But we are not. Because after we are in caucus, we come out and vote in public. She also says, "If in fact it is about partisan officials getting together to look at how certain things effect their platform, then that's really not an issue that is part of the public policy debate." I think that pretty clearly states it. Thank you very much Mr. President.

SENATOR BELOW: Thank you Mr. President. I rise in opposition to the amendment. I think that there is a legitimate question as to when a caucus, a partisan caucus of a quorum of a public body, when and if it is appropriate, for them to meet behind closed doors to discuss public business. We are, as a state, not the geographic territory that we see outlined on the map, but under our constitution, we are as a state, the people inhabiting this territory, that form a body politic. A body made up of the people of this state. We are here on the peoples business and only on the peoples business. When we look at the right-to-know law, the access to

public records and meetings, it is interesting how it starts with a definition of a public proceeding as "the transaction of any functions effecting any or all of the citizens of the state by any of the following." It starts with the general court, including executive sessions of committees. The Governor's Council and the Governor with the Governor's Council. It goes on to talk about meetings open to the public. It says "for the purpose of this section, a meeting shall mean the convening of a quorum of the membership of a public body to discuss or act upon matters over which the public body has supervision, control, jurisdiction, or advisory power." So right there in the very definition, whenever the quorum of a public body gathers to discuss the peoples business, that is a meeting. Under the current law, is subject to be an open meeting. There are very limited exceptions. A chance meeting or social meeting, strategy or negotiation with respective collective bargaining, consultation with legal counsel. This amendment would codify and put into that whenever that quorum of a public body happens to be all the members of the same partisan political party, then they could meet freely behind closed doors and discuss the peoples business. The Governor and Council happen to be members of the same party. Does this mean that the Governor and Council can routinely now, at any time they wish, including in the middle of their meeting, shut the doors, ask everybody, the people and the press to leave, discuss the public's business, poll amongst themselves and decide how they are going to vote, and then let people back in simply for the formality of casting the vote in public that has already been decided behind closed doors without the benefit of the peoples right to know. I would suggest that this language is repugnant to the constitution of our state. Part I, [Article 8] states rather clearly, Entitled "[Accountability of Magistrates and Officers; Public's Right-to-Know.] All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the people's right of access to governmental proceedings and records shall not be unreasonably restricted." To say now that we are going to codify a practice where the quorum of any public body, perhaps the entire public body, can shut the door, shut the public out, discuss the public's business in private, whenever it wants to, does not seem to be, to me, a reasonable...seems to be an unreasonable restriction to governmental proceedings. Certainly the practice of recessing of having a quorum of the body go behind closed doors to discuss the matter of opinion before the body, has become rather frequent in recent years. That doesn't necessarily make it right. Maybe on some circumstances it is right, but I think that this is sufficient importance that it merits a public hearing. It merits some deliberation. At some time other than at 8:30 at night when there are all of four members of the public in the gallery and two members of the press in the room. You know, when I first was elected to the Senate, it was the first time that there happened to be a democratic majority in 86 years. This was the very first question that...one of the very first questions I was confronted with in two respects. The question...I raised the question, aren't we a quorum of the body, meeting privately? Of course the answer was well "the Republicans have always done this so it must be okay." That question kept coming up. I remember occasions when we discussed it and said, well if somebody knocks on the door...if the press knocks on the door we will let them in. I believe that there were times when we were caucusing up in the Presidents Office when the press

knocked on the door and we let them in. But there was another interesting dynamic that got me to thinking, which was the very first question which was proposed, was "who are we going to elect for Senate President?" Members of our caucus at that time said, "we have to close ranks and do whatever the majority of the caucus wants to do." The majority of the caucus was seven members of a 24 member body. It was suggested that seven members be able to determine who...make a decision for the 24 member body. Some of us rejected that notion. As it just didn't make sense that seven members make decisions for a 24 member body. Now I am not suggesting that anyone here is not well intentioned, but we have to think beyond ourselves. If we write this into law, it could be there for decades. Beyond us, beyond the Senate, to other public bodies. The question becomes, what kind of opportunities for abuse does this create, that our constitution, that our right-to-know law seek to avoid? Which could be a situation...there is a very different dynamic when you've got the entire quorum behind closed doors and there is peer pressure to go along with the majority, versus what you get when you have a multi-lateral discussion of subsets of a quorum. We have always been permitted to have subsets of a quorum, take a break and talk amongst themselves, but you have a different dynamic there then when you pull together a quorum behind closed doors to discuss the people's business, the public's business. I would urge that we not pass this at this time. That we take the opportunity to think more carefully about this. To think about why these things are written into the very constitution of this body politic, the people that inhabit the state. Thank you.

SENATOR PRESCOTT: Senator Below, I am not as familiar with the congresses method of caucusing. I take my little bit of my role from that, that they do caucus. They do have meetings. I made, took my oath of office to uphold both the US Constitution and the New Hampshire Constitution, and yet I believe in congress, and I want you to correct me if I am wrong, they have caucuses, they have recesses and meetings that have a quorum and behind closed doors. The right-to-know law does not get to those meetings. Can you let me know if I am wrong and that if we are doing it wrong, US Congress is doing it wrong? Could you please explain?

SENATOR BELOW: I have no...I really have no familiarity with what US Congress does, which I think is part of the problem that this was not a bill that was submitted or something that was presented in a public hearing. I was reading the calendar a couple of nights ago and stumbled across this. I have had no time to research it. I would like to know what other states do. I think that it is...I don't know. I just really don't know. I think that...I have never observed congress in the middle of session saying, "we are going to take a break instead of debating this in public and go behind closed doors to have this debate." I just really don't know what their practice is or I don't know what...but I do know what our constitution is and what the intent of our right-to-know law is. I am concerned that we be more deliberative about such a major codification.

**Recess.**

**Out of recess.**

SENATOR CLEGG: Thank you Mr. President. I will be brief. Let me take off my jacket. I would like to point out that the bill's about a commission. That commission can spend the summer defining what a caucus is, defining when they can meet and when they can't. But in the meantime,



while they are doing their work, we pass this as amended, and we continue the practice that has gone on as long as I have been here, and that is roughly nine years. That is when this body had Democrat majority or a Republican majority over the years, each one caucusing behind closed doors. When I was in the House, each party caucused behind closed doors. There was at one time, three parties over there, there were Libertarians. We understand that they caucused behind closed doors, but we were heard, it was a closet on the third floor, so we are not sure. All that we are doing is as I said, codifying an existing practice that nobody has had a problem with and at the same time, setting up a commission to look at how things are done. Whether it is right or wrong, how they should be and they can come back with legislation at the end of the year. Thank you Mr. President.

SENATOR ESTABROOK: Thank you Mr. President. Nobody has a problem with it? We don't know that because we haven't had a public hearing on it. I think that we should put this bill on the table and discuss it in the light of day next week.

### **MOTION TO TABLE**

Senator Below moved to have **HB 606** laid on the table.

**Question is on the motion to table.**

**A roll call was requested by Senator Below.**

**Seconded by Senator Estabrook.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Sapareto, Morse, Prescott.**

**Yeas: 6 - Nays: 16**

**Motion failed.**

**Senator Clegg moved the question.**

SENATOR EATON (In the Chair): Without any objection, go ahead Senator Below.

SENATOR BELOW: Senator Clegg, you suggested that the commission can study this issue. Under what part of the statute would they take this issue up? I mean, it doesn't appear to me as though they would be directed to look at this issue.

SENATOR CLEGG: On page two of the bill, IX "any other matter deemed relevant by the commission."

SENATOR BELOW: I would request that there be a roll call and I would like to divide the question so...

SENATOR CLEGG: Mr. President. I moved the question.

SENATOR EATON (In the Chair): The question has been moved and we are in the voting mode, and I did allow that latitude to you.

SENATOR BELOW: Okay. Don't we have to vote on moving the question.

SENATOR EATON (In the Chair): Thank you.

**Senator Clegg moved the question.**

**Adopted.**

**Senator Below moved to divide the question.**

SENATOR BELOW: Mr. President, I would like to request a roll call and I would like to divide out from question section 7 of the amendment.

SENATOR EATON (In the Chair): Senator Below, please explain your division.

SENATOR BELOW: The amendment on page 20 has a section 7. So my request is to divide out section 7.

SENATOR EATON (In the Chair): You are speaking about dividing the question from line 11 to 19?

SENATOR BELOW: Yes.

SENATOR EATON (In the Chair): The motion has been made to move to divide, is there any objection? (There was objection.) Then we have to vote on the objection.

**PARLIAMENTARY INQUIRY**

SENATOR BELOW: Parliamentary inquiry? Don't our rules say that under Rule #10 "Any member may call for a division of the question when the sense will admit it?" I don't understand. I don't ever recall voting on the question of dividing the question.

SENATOR EATON (In the Chair): On Section 7 we are going to divide line 11 through 19. That will be removed to vote on separately. We will have the Clerk read what will be the division.

**The chair ruled that the bill is devisable.**

**Question is on the motion of Section 7, Lines 11-19.**

SENATOR BELOW: Are we voting on that part first and then we will vote on the rest of it?

SENATOR EATON (In the Chair): Right.

**PARLIAMENTARY INQUIRY**

SENATOR CLEGG: Parliamentary inquiry?

SENATOR EATON (In the Chair): Parliamentary inquiry.

SENATOR CLEGG: If I understand correctly, the motion on the floor is ought to pass. So if you are voting on Section 7 as this roll calls it, and you wanted it to continue to pass, would your vote not be yes? If you have one section that you are going to call the roll call on. The motion for that section is ought to pass. Am I correct?

SENATOR EATON (In the Chair): Yes.

SENATOR CLEGG: So when you call the roll on Section 7, if I want it to pass, my vote would be a yes, is that correct? I want it clarified first. That is not what he said a minute ago. Joe, they need another lawyer.

SENATOR EATON (In the Chair): Parliamentary inquiry. The motion is ought to pass on the bill without Section 7, line 11-19. That will be a separate vote.

SENATOR CLEGG: Okay, so I am voting on everything but Section 7 right now?

SENATOR EATON (In the Chair): Correct.

SENATOR CLEGG: Are we sure? Okay. What am I voting on? I believe the proper procedure would be to vote on the section that has been removed. There was a roll call requested on the section that we all call now, 7. The pending motion is ought to pass.

SENATOR EATON (In the Chair): If you wish to have this section that we just read, lines 11-12 on your bill, remain in the bill, you will vote yes.

### **PARLIAMENTARY INQUIRY**

SENATOR GREEN: Mr. President, is the motion to suspend the rules in order? Is it a higher order than dividing the question?

SENATOR EATON (In the Chair): Would you explain your request please?

SENATOR GREEN: My question is, is it in order to make a motion to suspend the rules?

SENATOR EATON (In the Chair): Yes.

SENATOR GREEN: Then I would like to make a motion to suspend the rules for the purpose of making a motion that being specific to the rules, which would be the body to overrule the question of dividing the question? As I understand parliamentary and I am looking at the rules, I am not sure what the rules allow me to do. So if I suspend the question and the body agrees to suspend the question, I can make a motion, which is either consistent or inconsistent with the rules, as I am not sure, and they can vote to...the body would deny the motion to divide. Overrule the chair, which I don't like doing, but let's get out of this mess.

SENATOR EATON (In the Chair): To answer the Parliamentary inquiry. The motion is ought to pass on lines 11-19. After that, we vote ought to pass on the remaining sections. The remaining of the bill. Sorry. The remainder of the amendment, then we will vote on the bill. We are voting on Section 7, line 11-19.

**Question is on the motion of ought to pass on Section 7, Lines 11-19.**

**A roll call was requested by Senator Below.**

**Seconded by Senator D'Allesandro.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**The following Senators voted No: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 17 - Nays: 6**

**Adopted.**

**Question is on the adoption of lines 1-10 & line 20.**

**Adopted.**

**Senator Clegg moved the question.**

**Adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**MOTION OF RECONSIDERATION**

Senator D'Allesandro, having voted with the prevailing side, moved reconsideration of **HB 606** whereby we ordered it to third reading.

**PARLIAMENTARY INQUIRY**

SENATOR KENNEY: Mr. President, parliamentary inquiry? Did Senator D'Allesandro vote during the division or did he vote during the last vote?

SENATOR D'ALLESANDRO: Senator D'Allesandro voted on every vote. I want to make that perfectly clear. It is a matter of public record. Open public record. I voted on every vote.

SENATOR KENNEY: Well I guess the question that I have is, was Senator D'Allesandro on the prevailing side?

SENATOR D'ALLESANDRO: Having voted with the majority on a voice vote. Yes.

**PARLIAMENTARY INQUIRY**

SENATOR BOYCE: Parliamentary inquiry?

SENATOR EATON (In the Chair): Parliamentary inquiry, Senator Boyce.

SENATOR BOYCE: I just want to be clear. Voting yes, on reconsideration would have the effect of negating the vote we just took? So if you want to continue the vote that we just took, you would have to vote no at this time, is that correct?

SENATOR EATON (In the Chair): If you are for reconsideration, you vote yes. If you are not for reconsideration, you will vote no.

SENATOR CLEGG: Am I allowed to speak on a reconsideration motion?

SENATOR EATON (In the Chair): Yes.

SENATOR CLEGG: I probably moved in haste by moving the question. I thought that we had spent enough time. I understand that Senator Larsen has an amendment. I would have no problem with reconsidering so that she could present her amendment.

SENATOR D'ALLESANDRO: Thank you Mr. President. I thank Senator Clegg for that courtesy. The reason for reconsideration was to allow for the offering of that amendment. So I appreciate his courtesy. I withdraw...no, we still need the motion to reconsider. Time out.

**Question is on the motion of reconsideration.**

**Adopted.**

**HB 606**, establishing a right-to-know study commission.

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist. 15

Sen. Below, Dist. 5

Sen. D'Allesandro, Dist. 20

Sen. Cohen, Dist. 24

Sen. Estabrook, Dist. 21

Sen. Foster, Dist. 13

**May 22, 2003**

**2003-1774s**

**01/09**

**Floor Amendment to HB 606**

Amend the title of the bill by replacing it with the following:

**AN ACT** establishing a right-to-know study commission.

Amend the bill by replacing section 2 with the following:

2 Commission Established. There is established a commission to study the right-to-know law in light of the supreme court's decision in *Hawkins v. N.H. Department of Health and Human Services* and increasing use of electronic communications in the transaction of governmental business. The commission shall also study when certain caucuses are not meetings within the context of the right-to-know law.

Amend paragraphs VIII and IX of section 4 of the bill by replacing them with the following:

VIII. The extent to which the public will be provided access to stored computer data under the right-to-know law.

IX. If, when, and under what circumstances a partisan caucus by the members of a public body, consisting of a quorum of that body, should be exempt from the provisions of the right-to-know law.

X. Any other matter deemed relevant by the commission.

Amend the bill by replacing all after section 6 with the following:

7 Effective Date. This act shall take effect upon its passage.

**2003-1774s**

#### AMENDED ANALYSIS

This bill establishes a commission to study the right-to-know law, including the issue of electronic communications and when certain caucuses by members of a public body are not meetings under the right-to-know law.

SENATOR LARSEN: Thank you Mr. President, and thank you for the courtesy of recognizing that when you work to prepare a floor amendment, it is important to be able to present it. The floor amendment that I would offer to you is 1774's. It would in fact establish the commission to study the right-to-know law, and it would include, in fact, a study of when the public would be provided access, and under what circumstances of partisan caucus by members of a public body consisting of a quorum of that body, should be exempt from the provisions of the right-to-know law. All of us know that there are opportunities for abuse in the democratic process. While many of you never would intend to abuse that process, we do need to look at how we draft this law and what you have in the calendar, is in fact, a very broad and possibly abused...possible to be abused. I would urge you to allow this commission to look at this issue, to not put it into law while they are looking at it because once things are in law, they tend to stay there for many, many years, but in fact, to look at it and to encourage the commission. Once they have this duty we can ask them to report it out quickly. I urge you to vote yes on 1774's.

SENATOR BOYCE: I am not clear on what this amendment is actually doing because it says that it is replacing Section 2 of the bill, then it is replacing all after Section...amending part 4 and then six, but what we have just done has just changed the bill from the original form and therefore, these amendments don't line up exactly with the parts of the bill as it stands right now. So my question is, if this passes, because it does not amend the bill by replacing all, it only replaces parts? I know that in other situations that we have had, where the bill had been amended once and a new amendment came in. The new amendment is simply interspersed in with the previous amendments. I am not clear exactly, what this amendment is going to do.

SENATOR EATON (In the Chair): Is that a question for Senator Larsen?

SENATOR BOYCE: No, it is a question to you and the Clerk to clarify for us, what this amendment is going to do? What parts of it will replace what's in the bill as it stands?

SENATOR O'HEARN: Thank you Mr. President. I am looking at my file from HB 606 and from what this looks like, is the amendment that Senator Larsen is offering is the vote that we just took, which is removing Section 7 and having voted for Section 7, I don't quite understand why this amendment needed to come forward?

SENATOR EATON (In the Chair): **TAPE INAUDIBLE** Starting with "The" and through line 10 and 11, it also adds 17-19.

SENATOR BOYCE: **TAPE INAUDIBLE** move any of the bill as it stands now?

SENATOR EATON (In the Chair): Yes.

SENATOR BOYCE: Okay. I just wanted to be clear.

SENATOR CLEGG: Thank you Mr. President. It appears to me that this would undo everything that we just had a vote on, so I would urge my fellow Senators to vote no on the amendment. Thank you.

SENATOR ESTABROOK: Thank you Mr. President. It is my understanding that the amendment before us directs this commission to study the issue of caucus and their appropriateness, whereas the language that currently exists leaves that open and they could just as soon decide not to study that. So the purpose of this amendment is to force a study of the issues that we have taken an hour to discuss.

SENATOR CLEGG: Thank you Mr. President. If this commission doesn't listen to what happened in this body over this bill, and chooses not to study caucuses then we have chosen the wrong people for the commission.

SENATOR GREEN: I want to serve.

SENATOR ESTABROOK: I will remember that.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**Yeas: 6 - Nays: 17**

**Floor amendment failed.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 627-FN**, relative to domicile for voting purposes and penalties for voter fraud. Internal Affairs Committee. Ought to pass with amendment, Vote 3-0. Senator Boyce for the committee.

Internal Affairs  
May 14, 2003  
2003-1640s  
03/09

### Amendment to HB 627-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to domicile for voting purposes, penalties for voter fraud, and access to preserved ballots.

Amend the bill by replacing section 1 with the following:

1 County Attorneys; Election, Temporary Appointments. Amend RSA 7:33 to read as follows:

7:33 Election; ~~[Vacancies]~~ **Temporary Appointments.** There shall be a county attorney for each county, who shall be a member of the New Hampshire bar, elected biennially by the ~~[inhabitants]~~ **voters** of the county. If the county attorney is absent at any term of court or unable to discharge the duties of the office, the superior court, acting as a body, shall appoint a county attorney, who shall be a member of the New Hampshire bar, for the time being and allow said appointee such compensation for his **or her** services as they think reasonable.

Amend RSA 654:12, II(b)(3) as inserted by section 29 of the bill by replacing it with the following:

#### **(3) Photo identification issued by local or state government.**

Amend RSA 654:17, I as inserted by section 30 of the bill by replacing it with the following:

I. The absentee registration affidavit shall be prepared by the secretary of state and shall be in substantially the following form:  
Affidavit (Absence from town)

I, \_\_\_\_\_ do hereby swear or affirm, under ~~[penalty of perjury]~~ **the penalties for voting fraud set forth below**, the following:

1) ~~(a)~~ That my legal domicile is in the town of \_\_\_\_\_, New Hampshire, I will be of the age of 18 years or over on election day and am entitled to vote in the election to be held in said town on \_\_\_\_\_, ~~[±9]~~ \_\_\_\_\_ **(date)**, except for the fact that my name does not appear on the checklist to be used in said town at such election;

~~[(b) That if I were personally to appear before the supervisors of the checklist of said town in their regular session for the correction of the checklist for said election, I would present the following as proof of domicile \_\_\_\_\_ (including but not limited to a drivers license, electric bill, passport, or cancelled check)];~~

2) That I do not intend to be present within said town at such time prior to said election as shall enable me personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;

3) That I am temporarily residing in \_\_\_\_\_ (city and state or city, province, and country);

**4) That I hereby enclose one of the following as proof of identity and domicile:**

**(a) A copy of a current and valid New Hampshire driver's license or an armed services identification or other photo identification issued by the United States government that shows the name and address of the voter; or**

**(b) A copy of a current and valid photo identification and a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter;**

**5) That I acknowledge that if I do not provide a copy of proof of identity and domicile as required by section 4) above, this application may not be approved; and**

[4)] 6) That I hereby make application for the addition of my name to the checklist of said town to be used at said election.

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Signature of Applicant

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Date

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000. Affidavit (Physical Disability)

I, \_\_\_\_\_ do hereby swear or affirm, under [~~penalty of perjury~~] **the penalties for voting fraud set forth below**, the following:

1)[~~(a)~~] That my legal domicile is in the town of \_\_\_\_\_, New Hampshire, I will be of the age of 18 years or over on election day, and am entitled to vote in the election to be held in said town on \_\_\_\_\_, [19] \_\_\_\_\_ (date), except for the fact that my name does not appear on the checklist to be used in said town at such election;

[~~(b) That if I were personally to appear before the supervisors of the checklist of said town in their regular session for the correction of the checklist for said election, I would present the following as proof of domicile \_\_\_\_\_ (including but not limited to a drivers license, electric bill, passport, or cancelled check);]~~

2) That I am unable by reason of physical disability personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;

**3) That I hereby enclose one of the following as proof of identity and domicile:**

**(a) A copy of a current and valid New Hampshire driver's license or an armed services identification or other photo identification issued by the United States government that shows the name and address of the voter; or**

**(b) A copy of a current and valid photo identification and a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter;**

**4) That I acknowledge that if I do not provide a copy of proof of identity and domicile as required by section 3) above, this application may not be approved; and**

[3)] 5) That I hereby make application for the addition of my name to the checklist of said town to be used at said election.

---

Signature of Applicant

---

Date



In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

Amend the bill by deleting section 41 and renumbering the original sections 42-62 to read as 41-61, respectively.

Amend the bill by replacing section 42 with the following:

42 Vacancies Among County Officers; County Commissioner. Amend RSA 661:9, II(a) to read as follows:

(a) If a vacancy occurs in the office of a county commissioner, the members of the county convention shall fill the vacancy by majority vote until the next biennial election of county officers. If the term filled is less than the unexpired term, then notwithstanding any provisions of RSA 653:1, VI, the commissioner district filled pursuant to this paragraph shall be added to the next biennial election ballot to be chosen by the ~~inhabitants~~ **domiciliaries** of the county for a 2-year term.

Amend the bill by replacing section 48 with the following:

48 Election Officer. Amend RSA 652:14 to read as follows:

652:14 Election Officer. "Election officer" shall mean any moderator, **deputy moderator, assistant moderator**, town clerk, **deputy town clerk, city clerk, deputy city clerk**, selectman, supervisor of the check-list, **registrar, or deputy registrar** ~~[or inspector of election]~~.

Amend the bill by inserting after section 60 the following and renumbering the original section 61 to read as 64:

61 Sealing and Certifying Ballots; Exemption from Right-to-Know Law. Amend RSA 659:95 to read as follows:

659:95 Sealing and Certifying Ballots.

**I.** Immediately after the ballots cast at a state election have been tabulated and the result has been announced and the return has been made, the moderator or ~~[his]~~ **the moderator's** designee, in the presence of the selectmen or their designee, shall place the cast, cancelled, and uncast ballots, including such ballots from any additional polling places, and further including the successfully challenged absentee ballots still contained in their envelopes, in the containers provided by the secretary of state as required by RSA 659:97 and shall seal such container with the sealer provided by the secretary of state as required by RSA 659:97. The moderator or ~~[his]~~ **the moderator's** designee shall then enter in the appropriate blanks on such sealer on each container the number of cast, cancelled, and uncast ballots in such container and shall endorse in the appropriate place on such sealer a certificate in substance as follows: Enclosed are the ballots from the state election in the town of \_\_\_\_\_ (or in ward \_\_\_\_\_ in the city of \_\_\_\_\_) held on \_\_\_\_\_, 19\_\_\_\_\_, required by law to be preserved. The moderator and the selectmen or their designee shall sign their names in the appropriate blanks on the sealer.

**II. Ballots, including cast, cancelled, and uncast ballots and successfully challenged absentee ballots still contained in their envelopes, prepared or preserved in accordance with the election laws shall be exempt from the provisions of RSA 91-A. This exemption shall apply to any ballots or absentee voter affidavit envelopes prepared for or used in any election conducted by the state or any political subdivision, including federal elections.**

62 General Provisions for Recounts; Disposal of Ballots; Exemption from Right-to-Know Law. Amend RSA 660:16 to read as follows:  
660:16 Disposal of Ballots.

**I.** Upon the conclusion of every recount, the secretary of state shall replace the untested ballots and absentee voter envelopes in a suitable container for storage. The secretary of state shall retain the ballots and the absentee envelopes for at least 60 days following the recount. Upon an order of the ballot law commission, the secretary of state shall produce the ballots for the inspection of the commission. Following the commission's inspection, the secretary of state shall replace the ballots and envelopes, seal them, and certify the contents and the date when they were examined by the commission. The envelopes and ballots shall be subject to the order of the body to which such person claims to be elected or of the officers required by law to examine the records and to issue certificates of election to such office or of any court having jurisdiction over them.

**II. Ballots, including cast, cancelled, and uncast ballots and successfully challenged absentee ballots still contained in their envelopes, prepared or preserved in accordance with the election laws shall be exempt from the provisions of RSA 91-A. This exemption shall apply to any ballots or absentee voter affidavit envelopes prepared for or used in any election conducted by the state or any political subdivision, including federal elections.**

63 Town Elections; Preservation of Ballots after Recount; Exemption from Right-to-Know Law. Amend RSA 669:33 to read as follows:

669:33 Preservation of Ballots after Recount.

**I.** Upon the conclusion of the recount, the clerk shall place the ballots and all envelopes or wrappers which had previously contained them in a suitable container showing the contents and the date when and the reason why it was opened; and said clerk shall retain said ballots until the expiration of 60 days from the date of the recount unless some action is pending which makes their further preservation necessary or unless enjoined by action brought before the superior court.

**II. Ballots, including cast, cancelled, and uncast ballots and successfully challenged absentee ballots still contained in their envelopes, prepared or preserved in accordance with the election laws shall be exempt from the provisions of RSA 91-A. This exemption shall apply to any ballots or absentee voter affidavit envelopes prepared for or used in any election conducted by the state or any political subdivision, including federal elections.**

2003-1640s

### AMENDED ANALYSIS

This bill:

- I. Establishes civil penalties for wrongful voting.
  - II. Modifies procedures for voter registration and absentee voting.
  - III. Modifies the laws concerning domicile as it relates to voting and eligibility for office.
  - IV. Exempts preserved ballots from RSA 91-A, the right-to-know law.
- This bill is a request of committee established by 2002, 15.

SENATOR BOYCE: Thank you Mr. President. I move that HB 627 ought to pass with amendment. House Bill 627 establishes civil penalties for wrongful voting and modifies procedures for voter registration. Additionally it clarifies the definition of domicile as it relates to voting and eligibility for office. A clearer definition of domicile has become needed since

the advent of same day voter registration. The committee amendment ensures that the provisions of this bill are consistent with the Help America Vote Act legislation that we just passed. Thank you for your support of the amended bill.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

SENATOR ESTABROOK: Thank you Mr. President. I will be brief. I just need to rise in opposition to the provisions in this bill which put further roadblocks in the way of those wishing to exercise their right to vote. For instance, the provision that someone requesting an absentee ballot needs to mail in a photocopy of their drivers license, it seems to me, to be just putting a roadblock that doesn't do anything to prevent fraud. So I think that this bill is another attempt to restrict voting by certain populations and I wanted to register my objection.

SENATOR LARSEN: I, too, rise to object to HB 627. This again, causes...it makes it difficult for those who are trying to obtain an absentee ballot. It makes it difficult for students to vote and it, in fact, puts more roadblocks in the way of encouraging people to vote and participate in the democratic process. I would ask for a roll call on HB 627.

**Question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Estabrook.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**The following Senators voted No: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 17 - Nays: 6**

**Adopted.**

**Ordered to third reading.**

**HB 670-FN**, establishing a procedure for release by a state agency of statistical information for research purposes. Internal Affairs Committee. Ought to pass with amendment, Vote 3-0. Senator O'Hearn for the committee.

**Internal Affairs**

**May 14, 2003**

**2003-1647s**

**01/05**

**Amendment to HB 670-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** establishing a procedure for release by a state agency of statistical information for research purposes and relative to health care data.

Amend the bill by replacing section 1 with the following:

1 Statement of Purpose.

I. The general court recognizes that:

(a) Preserving the confidentiality of individually identifiable information in the possession of the state is of great importance to our citizens;

(b) Openness in the conduct of public business is essential to a democratic society;

(c) Information and data collected or maintained with public funds is held for the collective benefit of the citizenry;

(d) Public policy can be improved and program administration can be made more efficient and effective through analysis of information and data; and

(e) The collection and maintenance of reliable and comprehensive health care data is necessary to promote informed decision-making, increase accountability in the health care system, and improve health care planning.

II. Therefore, the general court hereby determines that there is a need to collect encrypted insurance claims data and to clarify the conditions under which limited data sets and health care data and information that may relate to individual citizens may be released.

Amend the introductory paragraph of RSA 91-A:10, II as inserted by section 2 of the bill by replacing it with the following:

II. Except as otherwise provided by law, upon request an agency shall release limited data sets and statistical tables with any cell size more than 0 and less than 5 contained in agency files to requestors for the purposes of research under the following conditions:

Amend RSA 91-A:10, VI as inserted by section 2 of the bill by replacing it with the following:

VI. Nothing in this section shall exempt any requestor from paying fees otherwise established by law for obtaining copies of limited data sets or statistical tables. Such fees shall be based on the cost of providing the copy in the format requested. The agency head shall provide the requestor with a written description of the basis for the fee.

Amend the bill by replacing all after section 2 with the following:

3 Disclosure. RSA 420-G:11, II is repealed and reenacted to read as follows:

II.(a) All health carriers shall electronically provide:

(1) Their encrypted claims data to the department and to the department of health and human services in accordance with rules approved by the commissioner of health and human services and adopted by the insurance commissioner under RSA 420-G:14.

(2) To the department of health and human services, cross-matched claims data on requested policyholders, and subscriber information necessary for third party liability for benefits provided under RSA 167, filed in accordance with rules adopted under RSA 167:3-c.

(b) Notwithstanding RSA 91-A:10, the collection, storage and release of health care data and statistical information that is subject to the federal requirements of the Health Information Privacy and Accountability Act (HIPAA) shall be governed exclusively by the rules adopted thereunder in 45 CFR Parts 160 and 164.

4 New Paragraph; Disclosure. Amend RSA 420-G:11 by inserting after paragraph II the following new paragraph:

II-a. All health carriers and other health plans that collect the Health Employer Data and Information Set (HEDIS) shall annually submit the HEDIS information to the department.

5 Rulemaking. Amend RSA 420-G:14 to read as follows:

420-G:14 Rulemaking Authority.

I. The commissioner may adopt rules, under RSA 541-A, necessary to the proper administration of this chapter.

***II. The commissioner, with the approval of the commissioner of the department of health and human services, shall adopt rules, under RSA 541-A, defining the content, format, and schedule for the filing of encrypted claims data and HEDIS information under RSA 420-G:11.***

6 New Section; Health Care Information System. Amend RSA 420-G by inserting after section 11 the following new section:

420-G:11-a Development of a Comprehensive Health Care Information System. The department and the department of health and human services shall enter into a memorandum of understanding for collaboration in the development of a comprehensive health care information system. The memorandum of understanding shall include a description of the data sets that will be included in the comprehensive health care information system, the criteria and procedures for the development of limited use data sets, the criteria and procedures to ensure that Health Information Privacy and Accountability Act (HIPAA) compliant limited use data sets are accessible, and a proposed time frame for the creation of a comprehensive health care information system. To the extent allowed by HIPAA, the data shall be available as a resource for insurers, employers, providers, purchasers of health care, and state agencies to continuously review health care utilization, expenditures, and performance in New Hampshire and to enhance the ability of New Hampshire consumers and employers to make informed and cost-effective health care choices. In presenting data for public access, comparative considerations shall be made regarding geography, demographics, general economic factors, and institutional size.

7 Effective Date. This act shall take effect upon its passage.

**2003-1647s**

#### AMENDED ANALYSIS

This bill establishes a procedure for the release by a state agency of statistical information for research purposes. Under this bill, a requestor of such information shall sign a data use agreement specifying certain limitations for the use of the information.

This bill also requires the department of health and human services and the insurance department to collect encrypted health insurance claims data and to collaboratively develop a comprehensive health care information system.

SENATOR O'HEARN: Thank you Mr. President. I move HB 670-FN as ought to pass with amendment. House 670 establishes a procedure for the release by a state agency of statistical information for research purposes and was filed as a result of the work by the Privacy Task Force. This bill provides that state agencies can share data provided that individuals cannot be identified. The fees would be determined based on the work necessary for the agency to provide the information. The committee amendment affected the cell size of information only and did not change the amendment as well as adds language from a previously passed Senate Bill that has stalled in the House relative to health insurance carriers filing data with the Departments of Insurance and Health and Human Services. The amendment requires both departments to enter into a memorandum of understanding to develop a comprehensive healthcare information system. The Internal Affairs Committee asks your support for HB 670 as amended. I do have a floor amendment to follow. Thank you.

**Amendment adopted.**

Senator O'Hearn offered a floor amendment.

Sen. O'Hearn, Dist. 12

**May 21, 2003**

**2003-1749s**

**01/09**

### **Floor Amendment to HB 670-FN**

Amend the bill by replacing section 6 with the following:

6 New Section; Health Care Information System. Amend RSA 420-G by inserting after section 11 the following new section:

420-G:11-a Development of a Comprehensive Health Care Information System. The department and the department of health and human services shall enter into a memorandum of understanding for collaboration in the development of a comprehensive health care information system. The memorandum of understanding shall include a description of the data sets that will be included in the comprehensive health care information system, the criteria and procedures for the development of limited use data sets, the criteria and procedures to ensure that Health Information Privacy and Accountability Act (HIPAA) compliant limited use data sets are accessible, and a proposed time frame for the creation of a comprehensive health care information system. To the extent allowed by HIPAA, the data shall be available as a resource for insurers, employers, providers, purchasers of health care, and state agencies to continuously review health care utilization, expenditures, and performance in New Hampshire and to enhance the ability of New Hampshire consumers and employers to make informed and cost-effective health care choices. In presenting data for public access, comparative considerations shall be made regarding geography, demographics, general economic factors, and institutional size. Notwithstanding HIPAA or any other provision of law, the comprehensive health care information system shall not include or disclose any data that contains direct personal identifiers. For the purposes of this section, "direct personal identifiers" include information relating to an individual that contains primary or obvious identifiers, such as the individual's name, street address, e-mail address, telephone number, and social security number.

SENATOR O'HEARN: Thank you Mr. President. I rise to offer a floor amendment. The amendment, as we brought the amendment in from where it was in the House. The piece that was left out was the disclosure for research purposes...no I am reading the wrong thing. It deals with the privacy issue that there shall be...the last sentence... For the purposes of this section, "direct personal identifiers", "relating to an individual that contains privacy or obvious identifiers", shall not be included in this. That was the piece that was needed to complete that amendment.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 693-FN**, relative to the jurisdiction and constitution of the ballot law commission. Internal Affairs Committee. Ought to pass with amendment, Vote 2-1. Senator Boyce for the committee.

**Internal Affairs**  
**May 15, 2003**  
**2003-1641s**  
**03/01**

**Amendment to HB 693-FN**

Amend the bill by replacing section 2 with the following:

2 Election Day Morning Procedures; Statutes Posted. Amend RSA 658:29 to read as follows:

658:29 Statutes Posted. The secretary of state shall prepare and distribute copies of the following RSA sections which the selectmen shall post or cause to be posted outside the guardrail in the polling place: RSA 654:7-a, RSA 654:7-b, RSA 654:38, RSA 654:39; RSA 658:29; RSA 659:27, RSA 659:30, RSA 659:31, RSA 659:32, RSA 659:103; ***RSA 665:17***; RSA 666:4, RSA 666:5, RSA 666:8, RSA 666:12. In addition, the secretary of state shall include any other statutes or regulations that are required to be posted by state or federal law. The secretary of state may also include statutes or regulations that, in the secretary of state's judgment, would aid a voter in casting a vote or in contacting the appropriate official if the voter believes that his or her voting rights are being violated.

SENATOR BOYCE: Thank you Mr. President. I move that HB 693 be ought to pass with amendment. House Bill 693 changes the membership of the ballot law commission from 3 to 5 members with one member of each political party being appointed by both the President of the Senate and the Speaker of the House. The fifth member is appointed by the Executive Council. Because the Ballot Law Commission is an "arm" of the legislature and is based on provisions of our constitution, the House and the Senate should determine its membership. The Commission was established in order to provide a means of resolving ballot disputes without having to go to court. The committee amendment was presented for housekeeping purposes. The Internal Affairs Committee requests your support of this legislation as amended. Thank you.

SENATOR LARSEN: I rise to oppose HB 693 as amended. I am really concerned about this bill, in that it appears to be attacking the current Ballot Law Commission. What we have right now is a fair appeal process by people who are appointed by the Supreme Court so that when you have a question in an election law issue, you feel that you can go before a body that is hopefully, nonpartisan, not appointed by anyone here in the legislature, and hopefully, a fair procedure. I believe the Ballot Law Commissioners have operated in a fair way. I am concerned that what we are doing is retribution for perhaps some past decisions by the Ballot Law Commission that some members of the legislature did not agree with, so we are going to bring down the heavy hammer of change and say you are out. We are going to appoint our own members, and we are going to make sure that the answers that they give us are the ones we want to hear. That may not be the words in the bill, but I believe that that may be the outcome of this change. You may hear that it is all set up for the good, but why are we changing a process that has in fact, worked, that has in fact been fair? That is in fact run by appointees of the Supreme Court, one of whom is former Governor Hugh Gregg. Another of whom has been an exemplary moderator in the town of Hopkinton. Another of whom has been a fair public member. All of those people have gone through difficult decisions, but they have made them in what they believe are the fairest way. They have made them, taking into account the laws and trying to deal with them fairly. All of us expecting, in this state, that if you have

an election, one of the most important features of your election is that it is fair and that you have a place to go to appeal before a body that is non-partisan, that is in fact, impartial in that they will review your election issues in a way that you can trust. I think that if you look at the decisions of the Ballot Law Commission over the years, they have come down on one side or another and never for or against a particular party, but in fact in a fair way. I am afraid that we are politicizing this, and in that regard, we are then also politicizing our elections. I recognized that this state is currently lead by a majority and a super majority in this body, but I also recognize that all of you understand the importance of fair elections in a democracy. I think that we are moving to a point when elections may not be counted on as being reviewed in a fair way when you have a problem with an election. So I urge you to vote no on HB 693 as amended. I believe that our current Ballot Law Commission is fair. I think that if you look at the features...one of the features of the amendment, it particularly outlaws anyone who is an elected official, which actually seems to target one particular member of the Ballot Law Commission. I think that this is retribution. It is not good law.

SENATOR BARNES: Thank you Mr. President. I am going to try and make this short and sweet. Senator Larsen, I couldn't disagree with you more. I am sorry. I am going to go back and I am going to let this whole body hear what this Ballot Law Commission, who is supposed to be fair and to follow the law, did four years ago. I happened to have been involved with it. It was the year that the Secretary of State sat up there and pleaded his case. This legislature, in 1983, passed a law and it was called the Poor Loser Law, because a guy by the name of Bill Johnson, who I knew quite well during the course of the Senate races, ran as a Republican in the primary in District 17. He lost. He was convinced to run as a Democrat and he won. So in 1983, this legislature decided that was not the way things should be and they put in a Poor Loser Law. It is in the books, on the books since 1983. Now four years ago, I believe it was four years ago, there were primaries held and five people lost their elections. They went to the Ballot Law Commission. I sat up there for the hearings. They wanted to run on the Libertarian ticket, which was illegal. The Ballot Law Commission at that time, went against what this legislature passed. So I don't think that they were following the laws. I should have brought this bill in four years ago. It has taken four years, and I am sure that it wasn't from that incident that this has happened. I don't think that they follow the law. I think that they are God Almighty sometimes, and I happen to think that is wrong. I think the way that this bill is set up, that it is going to be fair and impartial. I don't think people are sitting up there and going against what this legislature did, is right. I think that it is dead wrong. I think that they should be ashamed of themselves. With that I will sit down and say good night.

SENATOR MARTEL: Thank you very much Mr. President. Being a member of the Secretary of States recount team, I saw the outcome of an election two years ago. In fact, I recounted it. I was one of the people who recounted it. Where a state Representative...it was a state Representatives race, it was very, very close. It was getting to be late in the day like it is now, and we were still recounting and recounting. All of a sudden, some people decided that they could no longer stay, and decided that they had to go elsewhere. Well the recount continued, under the supervision of other people. Once that was heard, a far cry came across saying that there was foul...it was illegally done and that the recount should



have stopped and that this was going to go to the Ballot Law Commission pending the decision of who had won the case. Who won the election. This is one of the examples, okay, I think, that this bill will help, that you have additional people who will serve on this commission and who will be able to look at the situations as they come before it, and in a fairer way so that the Ballot Law Commission can no longer be slandered like it was in that last election. I urge people to vote for this bill. Thank you very much.

SENATOR LARSEN: Senator Martel, I wasn't very involved in that recount, but I understood that there was in fact a question of fairness because some of the members who were at that recount were told that the recount was being stopped at five o'clock or whatever hour. They went home with the understanding that it was going to continue the next day. And in fact, then they found out it wasn't in fact stopped, and the recount continued. But those people, in all fairness, had understood something different and had gone home. There was an issue of fairness, and when you are in a judiciary kind of position, you weigh what you think is fair and they came down perhaps in a way that wasn't pleasing to all parties, but that was their judgement. Was it not that those people went home thinking that the recount was done for the night?

SENATOR MARTEL: I was there Senator, to answer your question that you asked me and I thank you for asking me the question. I was there when the decisionmaking was being faced, and there was no such statement ever made that we were going to stop the recount at a certain time.

SENATOR LARSEN: But did the parties who went home, think that there was a statement that the recount was done for the night?

SENATOR LARSEN: Senator, I can't say why they went home. Okay? All I know is that the recount continued and no one said it was going to stop, and for whatever reason, those people left. That is all that I can tell you. Thank you.

SENATOR CLEGG: Very briefly, Mr. President. I was part of that recount and I can tell you that there were members of one candidates party who had a function to go to. They trickled off a few at a time. The person was well represented by what was left. But because leadership of that party had been accused of abandoning him, they went to the Ballot Law Commission and there was no testimony that said that there was an actual stop to the recount. The Ballot Law Commission, in violation of our election laws, ordered a second recount, knowing full well, having the Attorney General come in and tell them that they had no right to order a second recount by our own law. That is the case. I can cite many, many more. I have been involved in recounts since 1994 up here, but I think that is sufficient, and I fully support the bill. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**The following Senators voted No: Below, Flanders, Odell, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 15 - Nays: 8**

**Adopted.**

**Ordered to third reading.**

**HB 134-FN**, relative to recommendations, appointments, and qualifications of marital masters and procedures for cases heard by marital masters. Judiciary Committee. Rerefer to committee, Vote 4-1. Senator Foster for the committee.

SENATOR FOSTER: Thank you Mr. President. I move that HB 134-FN be rereferred to committee. This legislation sought to require that marital masters be recommended by the Supreme Court, appointed by the Governor and approved by the Executive Council. Lengthy testimony in support and opposition to this bill showed a lot of passion on both sides of the issue. The Judiciary Committee does not wish to kill or pass the legislation as it currently stands. In order to have more time to work on this important matter, the committee requests that the bill be rereferred and asks your support. Thank you.

**Committee report of rereferred is adopted.**

**HB 288-FN**, imposing a criminal penalty for the dissemination of certain materials without consent. Judiciary Committee. Ought to pass with amendment, Vote 4-1. Senator Clegg for the committee.

**Senate Judiciary**

**May 14, 2003**

**2003-1621s**

**04/05**

### **Amendment to HB 288-FN**

Amend RSA 644:9, III as inserted by section 1 of the bill by replacing it with the following:

III. A person is guilty of a class A misdemeanor if that person knowingly disseminates or causes the dissemination of any photograph or video recording of himself or herself engaging in sexual activity with another person without the express consent of the other person or persons who appear in the photograph or videotape. In this paragraph, "disseminate" and "sexual activity" shall have the same meaning as in RSA 649-A:2. This paragraph shall not be construed to impair or limit any otherwise lawful activities of law enforcement personnel, or employees of governmental agencies or other entities, public or private, who, in the course and scope of their employment and supported by articulable suspicion, attempt to capture any type of visual image, sound recording, or other physical impression of a person during an investigation, surveillance, or monitoring of conduct to obtain evidence of suspected illegal activity, the suspected violation of any administrative rule or regulation, a suspected fraudulent insurance claim, or any other suspected fraudulent conduct or activity involving a violation of law, or pattern of business practices adversely affecting the public health or safety.

**2003-1621s**

### **AMENDED ANALYSIS**

This bill establishes a class A misdemeanor offense for any person who knowingly disseminates or causes the dissemination of any photograph or video recording of himself or herself engaging in sexual activity with

another person without the express consent of the other person or persons who appear in the photograph or videotape. This bill also provides an exception for the lawful activities of law enforcement personnel.

**SENATOR CLEGG:** Thank you Mr. President. I move HB 288 ought to pass with amendment. The bill establishes a Class A misdemeanor offense for any person who knowingly disseminates or causes the dissemination of any sexual photograph or video recording without the express consent of the person who appears in the photo or video. The committee amendment provides a reference to the definition of sexual activity and disseminate, and a clear limitation that exempts law enforcement or other governmental agencies involved in criminal investigation or surveillance. The Judiciary Committee respectfully requests your support.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 357-FN**, relative to child support insurance settlement intercept. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Sapareto for the committee.

**Senate Judiciary**

**May 9, 2003**

**2003-1564s**

**05/01**

### **Amendment to HB 357-FN**

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Alternative Method of Support Enforcement for Dependent Children; Child Support Insurance Settlement Intercept. Amend RSA 161-C by inserting after section 3-d the following new section:

161-C:3-e Child Support Insurance Settlement Intercept. The department may provide certain information to public agencies or its contracted agents in order to intercept insurance settlement payments or judgments claimed by individuals who are subject to a child support lien pursuant to RSA 161-C and who owe past-due support. The department may identify such individuals by name, last 4 digits of the individual's social security number or other taxpayer identification number, date of birth, last known address, employer, or any combination thereof. Any information provided by the department in accordance with this section shall remain the property of the state of New Hampshire and shall be purged by any public agency or contracted agent receiving said information upon completion of the data match exchange. The department may perform an audit to insure that any public agency or contracted agent has purged said information. The specific penalty for failure to purge the information shall be set forth in any contract or agreement between the department and any public agency or contracted agent made pursuant to this section. Any transaction cost incurred by the department related to the data match exchange shall be directly recovered by the department from any insurance settlement or judgment proceeds. Insurance settlement payments for casualty loss to personal or real property and past or future medical treatment shall be exempt from this section. Reasonable attorney fees and expenses shall be exempt from this section pursuant to RSA 311:13. Any settlement, payment, or judgment received under the

provision of this section shall be held by the department for 60 days prior to its release or distribution unless otherwise agreed to by the parties.

2 Alternative Method of Support Enforcement for Dependent Children; Exemptions; Certain Payments for Casualty Loss Exempt. Amend RSA 161-C:11, I to read as follows:

I. Except as provided in paragraph II of this section, any property otherwise exempt from trustee process, attachment and execution shall be exempt from an order to withhold and deliver, administrative seizure and disposition, and lien and foreclosure. ***Insurance settlement payments for casualty loss to personal or real property and past or future medical treatment shall be exempt from this section. Reasonable attorney fees and expenses shall be exempt from this section pursuant to RSA 311:13.***

3 Effective Date. This act shall take effect 60 days after its passage.

SENATOR SAPARETO: Thank you Mr. President. I move HB 357-FN ought to pass with amendment. This legislation authorizes the Department of Health and Human Services to intercept certain insurance settlements for payment of past-due child support as was requested by the Department. Currently 16 states allow entrance into an agreement in order to share data with the Child Support Lien Network. Large insurance carriers submit information to the network when insurance settlements occur. The committee amendment safeguards that settlement monies awarded to replace an automobile or home would not be attached by the Department. Also, reasonable attorney's fees would be protected because if attorneys were unwilling to take these cases on a contingency basis, then the settlement wouldn't occur at all. The Judiciary Committee recommends adoption as amended and asks your support. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 615-FN**, relative to the requirements for registration of sexual offenders. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

**Senate Judiciary**

**May 9, 2003**

**2003-1569s**

**04/10**

#### **Amendment to HB 615-FN**

Amend the bill by replacing all after section 2 with the following:

3 Registration of Criminal Offenders; Availability of Information. RSA 651-B:7, II is repealed and reenacted to read as follows:

II.(a) The division shall maintain a separate list of all individuals registered pursuant to this chapter who have been convicted of any violation or attempted violation of one of the following offenses, or of any law of another state or the federal government reasonably equivalent to one of the following offenses:

(1) RSA 632-A:2, I(1).

(2) RSA 632-A:2, II-III

(3) RSA 632-A:3, II, provided that the age difference between the convicted individual and the victim was more than 4 years at the time of the offense.

(4) RSA 645:1, II-III.

(5) Any offense described in RSA 651-B:1, V.

(b)(1) The list described in subparagraph (a) shall include:

(A) The name, address, and date of birth of the registered individual.

(B) The offense for which the individual was convicted.

(C) The date and court of the conviction for which the individual is registered.

(D) Outstanding arrest warrants, and the information listed in subparagraphs (b)(1)(A)-(C), for any sexual offender or offender against children who has not complied with the obligation to register under this chapter.

(2) Where such information is available, the list may also include:

(A) A photograph or physical description of the individual.

(B) The date and court of the individual's other convictions, if any.

(C) Information on the profile of the victim or victims of the individual's offense or offenses.

(D) The method of approach utilized by the individual.

(3) In no event shall the list include the identity of any victim.

4 New Paragraph; Registration of Criminal Offenders; Availability of Information. Amend RSA 651-B:7 by inserting after paragraph V the following new paragraph:

VI.(a) Notwithstanding the provisions of this section, any individual required to be registered whose name and information is contained on the list described in paragraph II(b) may file with the clerk of the superior court for the county in which the judgment was rendered an application for review of the public registration requirement contained in RSA 651-B:7. This application shall not be filed prior to the completion of all the terms and conditions of the sentence and in no case earlier than 10 years after the date of release following conviction. After review of the application, the court may schedule a hearing.

(b) The court shall provide notice of the application for review under this section to the victim within 30 days of any hearing. Prior to any decision granting the application, the court shall provide the victim with the opportunity to address the court. The victim may appear personally or by counsel and may reasonably express his or her views concerning the offense, the person responsible, and the need for maintaining the public registry requirement. The judge shall consider the statements of the victim pursuant to this section when making a decision regarding the application. The judge shall grant the application, after a hearing, only where, in the opinion of the court, removal from the public registry requirement under this section will assist the individual in the individual's rehabilitation and will be consistent with the public welfare. If an application for review is denied, any subsequent application may be filed only where good cause is shown, consistent with the provisions of this section. A decision granting an application for review under this section shall not remove any of the registration requirements contained in RSA 651-B:6.

5 New Section; Registration of Criminal Offenders; Hearing. Amend RSA 651-B by inserting after section 6 the following new section:

651-B:10 Hearing. Any offender who wishes to appeal a decision of the division regarding the duty to report and the duration of the duty to report may, within 10 days of notification, request a hearing on the matter before the commissioner. If such a request is made, the commissioner shall promptly schedule and conduct a hearing pursuant to rules

adopted under RSA 541-A. After hearing, the decision of the commissioner shall be final, and the offender shall have a right to appeal the decision in superior court.

6 Applicability. The provisions of this act shall apply to any person required to be registered pursuant to RSA 651-B:2 as of the effective date of this act.

7 Effective Date. This act shall take effect 60 days after its passage.

**2003-1569s**

### AMENDED ANALYSIS

This bill requires certain information to be included in the sexual offender database and provides that other information such as a photograph or physical description of the offender may be included, if available. The bill also provides a procedure for an individual required to be registered to review such requirement. The bill prohibits the department of safety from maintaining records of individuals who access or attempt to access the LENS system database.

SENATOR CLEGG: Thank you Mr. President. I move HB 615 ought to pass with amendment. The bill enables the Department of Safety to post photographs of those who are on the sexual offenders list, better known as "Megan's Law." The Supreme Court has upheld posting photos online of convicted sex offenders and over thirty states already do this. The amendment provides a review procedure that includes notice to the victim as well as an opportunity for the victim to express his or her views. The Judiciary Committee respectfully requests your support for this bill and the amendment.

**Amendment adopted.**

Senator Peterson offered a floor amendment.

Sen. Clegg, Dist. 14

**May 22, 2003**

**2003-1790s**

**01/09**

### Floor Amendment to HB 615-FN

Amend the bill by replacing all after section 2 with the following:

3 Registration of Criminal Offenders; Availability of Information. RSA 651-B:7, II is repealed and reenacted to read as follows:

II.(a) The division shall maintain a separate list of all individuals registered pursuant to this chapter who have been convicted of any violation or attempted violation of one of the following offenses, or of any law of another state or the federal government reasonably equivalent to one of the following offenses:

(1) RSA 632-A:2, I(1).

(2) RSA 632-A:2, II-III.

(3) RSA 632-A:3, II, provided that the age difference between the convicted individual and the victim was more than 4 years at the time of the offense.

(4) RSA 632-A:3, III.

(5) RSA 645:1, II-III.

(6) Any offense described in RSA 651-B:1, V.

(b)(1) The list described in subparagraph (a) shall include:

(A) The name, address, and date of birth of the registered individual.

(B) The offense for which the individual was convicted.

(C) The date and court of the conviction for which the individual is registered.

(D) Outstanding arrest warrants, and the information listed in subparagraphs (b)(1)(A)-(C), for any sexual offender or offender against children who has not complied with the obligation to register under this chapter.

(2) Where such information is available, the list may also include:

(A) A photograph or physical description of the individual.

(B) The date and court of the individual's other convictions, if any.

(C) Information on the profile of the victim or victims of the individual's offense or offenses.

(D) The method of approach utilized by the individual.

(3) In no event shall the list include the identity of any victim.

4 New Paragraph; Registration of Criminal Offenders; Availability of Information. Amend RSA 651-B:7 by inserting after paragraph V the following new paragraph:

VI.(a) Notwithstanding the provisions of this section, any individual required to be registered whose name and information is contained on the list described in subparagraph II(a) and who has been convicted of any violation or attempted violation of RSA 632-A:2, III or RSA 632-A:3, II, provided that the age difference between the convicted individual and the victim was more than 4 years at the time of the offense, may file with the clerk of the superior court for the county in which the judgment was rendered an application for review of the public registration requirement contained in RSA 651-B:7. This application shall not be filed prior to the completion of all the terms and conditions of the sentence and in no case earlier than 10 years after the date of release following conviction. After review of the application, the court may schedule a hearing.

(b) The court shall provide notice of the application for review under this section to the victim within 30 days of any hearing. Prior to any decision granting the application, the court shall provide the victim with the opportunity to address the court. The victim may appear personally or by counsel and may reasonably express his or her views concerning the offense, the person responsible, and the need for maintaining the public registry requirement. The judge shall consider the statements of the victim pursuant to this section when making a decision regarding the application. The judge shall grant the application, after a hearing, only where, in the opinion of the court, removal from the public registry requirement under this section will assist the individual in the individual's rehabilitation and will be consistent with the public welfare. If an application for review is denied, any subsequent application may be filed only where good cause is shown, consistent with the provisions of this section. A decision granting an application for review under this section shall not remove any of the registration requirements contained in RSA 651-B:6.

5 New Section; Registration of Criminal Offenders; Hearing. Amend RSA 651-B by inserting after section 9 the following new section:

651-B:10 Hearing. Any offender convicted of an offense in another state or under federal law who wishes to appeal a decision of the division regarding the division's determination that the offense is reasonably equivalent to an offense requiring registration under this chapter, including the duration of the duty to report may, within 10 days of notification, request a hearing on the matter before the commissioner. If such a request is made, the commissioner shall promptly schedule and conduct a hearing pursuant to rules adopted under RSA 541-A. After hearing, the decision of the commissioner shall be final, and the offender shall have a right to appeal the decision in superior court.

6 Applicability. The provisions of this act shall apply to any person required to be registered pursuant to RSA 651-B:2 as of the effective date of this act.

7 Effective Date. This act shall take effect 60 days after its passage.

**2003-1790s**

### AMENDED ANALYSIS

This bill requires certain information to be included in the sexual offender database and provides that other information such as a photograph or physical description of the offender may be included, if available. The bill also provides a procedure for an individual required to be registered to review such requirement. The bill prohibits the department of safety from maintaining records of individuals who access or attempt to access the LENS system database.

SENATOR PETERSON: Thank you Mr. President. I rise to offer a floor amendment to HB 615. Thank you Mr. President. The floor amendment picked...what we had was a situation where our crack staff picked up that there was a mistake in the drafting, in the committee amendment. We did discuss with committee members here today, the correction which would be appropriate and that is reflected in the amendment, which you see now before you. We urge the passage of the Senate so that the bill will be in proper form. Thank you.

SENATOR PRESCOTT: Thank you Mr. President. I would like to ask Senator Peterson a question. Senator Peterson, just a general question. I worked on this bill which wasn't passed last term and I am familiar with the...I am ready to vote for the bill without this amendment. I will vote for this amendment if you could just say that this is a technical change only and it doesn't really affect the intent of the bill at all.

SENATOR PETERSON: It doesn't affect the bill as far as the committee amendment goes. It merely gave the reference number correctly so that the section that was affected is correctly identified. That is the only change in this amendment.

SENATOR PRESCOTT: Thank you very much.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

SENATOR LARSEN: I would rise quickly to raise some questions which were raised by the ACLU. I think that people ought to be aware that there is some danger in doing this. There may be threatening or murder that is attempted on those who faces appear in this list. I think that we need to be at least aware that we are causing that concern among some people. There is also the concern of how does a person get their name off of this list if it is somehow listed in mistake? I am not sure that this amendment clarifies that. I recognize the interest of people in safeguarding others from this group of offenders, but I do think that we need to be concerned about those two issues and keep an eye on this law in terms of its effect in the long run.

SENATOR PETERSON: Thank you Mr. President. I would just like to briefly respond to Senator Larsen's concerns, which were understood and addressed in the committee. To the first concern, about photographs of sex offenders appearing on the list and being available to the public. That is a policy decision which is clearly something that this Senate has before it at this time. It was the judgement of the committee that this



was appropriate, as sometimes just the name is not enough for people to know that the person may indeed live in their neighborhood, and that is what people indeed wish to know. The second point about getting off the list was something that was addressed in the legislation. Although it is a very narrow exception, it only applies to certain cases. We did put into the bill, a concern that rose up from the committee hearing, a chance after ten years for under certain circumstances, a hearing to be held, and if a judge deemed it, in the best interest of the public, to be able to remove a name from the list. It is, I think, a valid human consideration that there may be instances where someone has been for many years, on such a list and with a proper hearing and notice to the victim included, there would be an opportunity to make the case that there was a reason to come off that list and it would not be something that would be a life sentence in that case; however, we did limit the instances in which that could happen, to cases of lower order abuse. For example, if it was the rape of a person under the age of 13. If it was some of the other heinous crimes that are listed, those trotting out of numbers there, each referred to acts, some of which are unspeakable. Those persons would not be afforded that opportunity under this legislation; however, if it was a situation, a statutory rape type of situation, where the ages were close or so forth, after a due period of time, this would be a possibility for a person. We feel that it is reasonable judgements that were made in the Judiciary Committee. I don't want to take the Senate's time, but I did want to respond to your question. Thank you for it.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 674-FN**, relative to legal representation for indigent parties and notification requirements under the Child Protection Act. Judiciary Committee. Ought to pass with amendment, Vote 4-1. Senator Clegg for the committee.

**Senate Judiciary**

**May 14, 2003**

**2003-1626s**

**09/10**

### **Amendment to HB 674-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to notification requirements under the Child Protection Act.

Amend the bill by replacing all after the enacting clause with the following:

1 Child Abuse and Neglect Proceedings; Protective Custody; Notification of Non-custodial Parent. Amend RSA 169-C:6, II-V to read as follows:

II. If a police or juvenile probation and parole officer removes a child under paragraph I above, the officer:

(a) Shall inform the court forthwith whereupon continued protective custody pending a hearing may be ordered by the court;

(b) May take the child to a child protection services worker of the department; or

(c) May place the child in a foster home; if a child is placed directly in a foster home, the department shall be notified of the incident and where the child is placed within 24 hours, unless there is a physician involved and treating the child and the child is or will be taken to and admitted to a hospital; and

(d) Shall, when the child is removed from an individual other than a parent or a person legally responsible for the child, make every reasonable effort to inform ~~(the parent)~~ **both parents** or other ~~(person)~~ **persons** legally responsible for the child's care where the child has been taken.

III. Any police or juvenile probation and parole officer or other individual acting in good faith pursuant to this section, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of such removal or placement.

IV. The court shall hold a hearing on the matter within 24 hours of taking the child into protective custody, Sundays and holidays excluded. Notice shall be given to **both parents and** all parties designated by the petitioner or the court.

V. If a child is found by a child protection services worker of the department to be in imminent danger in such circumstances or surroundings and where immediate removal appears necessary to protect the child from such imminent danger, the department's child protection services worker shall contact a judge or clerk immediately for an order to remove the child. ***Prior to any order authorizing foster placement, the child protective service worker shall inform the judge of efforts to locate any non-custodial parent or other relatives for temporary placement.***

2 Effective Date. This act shall take effect 60 days after its passage.

2003-1626s

#### AMENDED ANALYSIS

This bill establishes new requirements for notice of protective custody hearings.

SENATOR CLEGG: Thank you Mr. President. I move HB 674 ought to pass with amendment. As passed by the House, this legislation would have required the court to appoint, and DCYF to pay for an attorney for indigent stepparents accused of abuse or neglect. Because of the financial impact of approximately \$1.5 million which House Finance had not reviewed, the committee deleted the provision. The bill does continue to require that noncustodial parents be notified by DCYF in cases where a hearing is being held regarding whether to place a child in protective custody. The notification procedure makes sense because both parents should know that their child is going through a situation where they are at risk of being removed from their home. The Judiciary Committee respectfully requests your support for this bill. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 680-FN**, establishing a committee to study service contracts and repealing the law regarding legal services insurance. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Clegg for the committee.

**Senate Judiciary**  
**May 14, 2003**  
**2003-1625s**  
**01/10**

**Amendment to HB 680-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** establishing a committee to study service contracts and relative to prepaid legal services contracts.

Amend the bill by replacing all after section 6 with the following:

**7 Insurance; Prepaid Legal Services Contracts.** RSA 415-C is repealed and reenacted to read as follows:

**CHAPTER 415-C**

**PREPAID LEGAL SERVICES CONTRACTS**

**415-C:1 Scope and Purpose.** The purpose of this chapter is to create a legal framework within which prepaid legal services contracts, may be sold in this state.

**415-C:2 Definitions.** In this chapter:

I. "Commissioner" means the commissioner of insurance.

II. "Consumer" means a natural person who buys other than for purposes of resale any tangible personal property that is distributed in commerce and that is normally used for personal, family or household purposes and not for business or research purposes.

III. "Department" means the insurance department.

IV.(a) "Prepaid legal services contract" means the assumption of a contractual obligation to reimburse the beneficiary against or pay on behalf of the beneficiary, or to provide specified legal services or reimbursement for all or a portion of legal fees, costs, and expenses related to or arising out of services provided by or under the supervision of an individual licensed or admitted to practice law in the state of New Hampshire, in which the services are to be rendered, in consideration of a specified payment for an interval of time, regardless of whether the payment is made by the beneficiaries individually or by a third person for them, in such a manner that the total cost incurred by assuming the obligation is to be spread directly or indirectly among a group of persons. "Contractual obligation" includes an arrangement in which those persons for whom services are to be provided under the arrangement have reasonable expectations of enforceable rights.

(b) "Prepaid legal services contract" shall not include the provision of or reimbursement for legal services incidental to insurance coverages. The following are not considered prepaid legal services contracts under the laws of this state:

(1) Retainer contracts made with individual clients with the fees based on estimates of the nature and amount of services that will be provided to the specific client, and similar contracts made with a group of clients involved in the same or closely related legal matters, such as class actions.

(2) Plans providing no benefits other than a limited amount of consultation and advice on simple matters either alone or in combination with referral services or on the promise of fee discounts for other matters.

(3) Plans providing limited benefits on simple legal matters on an informal basis, not involving a legally binding promise, in the context of an employment or educational or similar relationship.

(4) Contracts that provide benefits under automobile club membership contracts and automobile liability insurance policies with limited legal services or reimbursement for legal services in automobile-related matters under the certificates of authority issued by the commissioner.

(5) Legal services or other legal services programs for the indigent.

(6) Legal services provided by unions or employee associations to their members in matters relating to employment or occupation.

(7) Legal services provided by an agency of the federal or state government or subdivision thereof to its employees or are otherwise excluded from the provisions of this chapter by the Federal Retirement Income Security Act of 1974, or any amendments thereto.

415-C:3 Requirements For Doing Business. No later than June 14 of each year, each provider of prepaid legal service contracts sold in this state shall file a registration with the commissioner. For the initial registration, the provider shall use a form prescribed by the commissioner and pay to the department an initial registration fee pursuant to RSA 400-A:29, VIII-a. Renewal shall be made by paying an annual renewal fee pursuant to RSA 400-A:29, VIII-a(b) and supplementing the original form to the extent of any material change to the registration.

415-C:4 Exemptions. Prepaid legal service contracts are exempt from this title, except for the provisions of this chapter and RSA 400-A:16 – RSA 400-A:25.

415-C:5 Required Disclosures. Prepaid legal service contracts marketed, sold, or offered for sale, issued, made, proposed to be made or administered in this state shall be written in clear, understandable language, and specify the terms under which the service contract is sold, the specific services to be provided and any limitations, exceptions or exclusions thereon.

415-C:6 Examination. For the purpose of determining the providers financial stability and protecting consumer interests, the commissioner shall have the power to examine and investigate into the affairs of every provider engaged in the business of service contracts in this state in order to determine compliance or noncompliance with this chapter. The expenses of examinations shall be paid to the state by the company or companies examined.

415-C:7 Penalties. The commissioner, after proper notice and opportunity for hearing, may take action to enforce the provisions of this chapter, or rules adopted pursuant to this chapter, and may:

I. Revoke or suspend the registration of the prepaid legal service provider;

II. Order the provider to cease and desist from further service contract operations;

III. Impose a penalty of not more than \$1000 for each violation or \$10,000 for each violation the commissioner finds to be willful; and

IV. Order the provider make restitution to contract holders.

415-C: 8 Rulemaking Authority. The commissioner may adopt rules, pursuant to RSA 541-A, as may be necessary to administer the provisions of this chapter.

415-C:9 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

8 New Paragraph; Prepaid Legal Services. Amend RSA 400-A:29 by inserting after paragraph VIII the following new paragraph:

**VIII-a. Prepaid Legal Services**

(a) Application fee \$300

(b) Annual renewal \$150

9 Effective Date. This act shall take effect upon its passage.

**2003-1625s****AMENDED ANALYSIS**

This bill establishes a committee to study service contracts including prepaid legal services contracts.

The bill also establishes parameters for prepaid legal service contracts to be sold in this state.

SENATOR CLEGG: Thank you Mr. President. I move HB 680 ought to pass with amendment. The legislation establishes a committee to study service contracts. While the Insurance Department had requested specific revisions, the House Commerce Committee changed the bill to a study committee. The House bill also repealed the statute that regulated legal services contracts. The Insurance Department opposed this. The committee amendment, which is supported by the Insurance Department, allows legal services' contracts to be sold in our state with regulation by the Department. The Judiciary Committee respectfully asks your support for the bill as amended. Thank you.

**Amendment adopted.****Question is on the adoption of the bill as amended.****Adopted.****Ordered to third reading.**

Senator Sapareto Rule #42 on HB 680-FN.

**HB 718-FN**, relative to endangering the welfare of a minor and relative to criminal responsibility for the commission of certain acts. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Sapareto for the committee.

**Senate Judiciary****May 14, 2003****2003-1633s****04/05****Amendment to HB 718-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to judicial proceedings for crimes committed by a minor which are not charged until after the minor reaches the age of majority and relative to the statute of limitations in cases involving destruction or falsification of evidence, witness tampering, or other unlawful conduct.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Transfer to Superior Court. Amend RSA 169-B:24 by inserting after paragraph IV the following new paragraph:

V. If an offense contained in RSA 628:1, II is committed by an individual before the age of 17 but not charged until after the individual has reached the age of 17, the district court shall follow the procedures set forth in this section to determine if the individual charged met the criteria of this section at the time the offense was committed.

2 New Subparagraph; Limitations; Destruction or Falsification of Evidence. Amend RSA 625:8, III by inserting after subparagraph (d) the following new subparagraph:

(e) For any offense where destruction or falsification of evidence, witness tampering, or other unlawful conduct delayed discovery of the offense, within one year of the discovery of the offense.

3 Effective Date. This act shall take effect January 1, 2004.

**2003-1633s**

### AMENDED ANALYSIS

This bill:

I. Specifies the procedure to be followed by the district court in cases where crimes are committed by minors but not charged until after they reach the age of majority.

II. Adds a one-year, discovery rule, statute of limitations for the prosecution of any offense which is delayed as a result of destruction or falsification of evidence or witness tampering.

SENATOR SAPARETO: Thank you Mr. President. I move HB 718 ought to pass with amendment. This bill was filed at the request of the Attorney General's office. Section one of the bill deals with crimes committed while the offender was a child but not charged until an adult. The District Court has no jurisdiction after the offender reaches the age of 18. Section II of the bill deals with the Diocese of Manchester case where there was witness tamperings and destruction of evidence. This provision clarifies that the statute of limitations tolls until the crime is discovered – then there is one year to prosecute. The third section, removed in the committee amendment, was problematic in that it attempted to charge someone for not taking action. This is unprecedented and fraught with potential misuse. Therefore, the committee removed Section 3 of the bill. The Judiciary Committee recommends the bill with amendment and asks your support. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 360-FN-A-L**, establishing a civil legal services fund consisting of court filing fee surcharges for the purpose of establishing and operating a New Hampshire Legal Assistance office in Nashua and relative to a New Hampshire Legal Assistance pilot project on serving the near-poor. Public Affairs Committee. Inexpedient to legislate, Vote 4-1. Senator Green for the committee.

SENATOR GREEN: Thank you Mr. President. I would like to move that the bill be inexpedient to legislate. The bill establishes a civil legal services fund consisting of court filing fees, surcharges for a two-year period for the purpose of establishing and operating a New Hampshire Legal Assistance Office in Nashua. The committee felt that was not a good thing to do based on the increases in fees, and they moved that we should not pass this bill. I would ask for your support of inexpedient to legislate.

SENATOR FOSTER: Thank you Mr. President. I rise in opposition to the committee report and would urge that you vote down inexpedient to legislate so I can submit a floor amendment dealing with at least one of the concerns that I think was raised about the bill. As Senator Green said, this

bill would establish a legal assistance office in Nashua, but the purpose of it would be, not only to serve the poor and near poor in the Nashua area, but actually in the southern tier of the state. The closest legal assistance office is in Manchester right now. Obviously the southern part of the state is the most populated part of the state. This bill has been passed by this body before, by the Senate. I think that Senator Pignatelli had submitted it in the past. The problem that it always ran into was in the House, so the sponsors of this bill this time, decided to start it in the House, thinking that perhaps if they could get it through the House, this body would look upon it favorably again. I attended the hearings in the House and the bill started out in House Finance, not with a policy committee, and went through an extremely tough hearing there, but as the hearing went on, what became clear to the committee, and I think why the House went along to pass the bill is, that it became clear to them that the office would actually bring money into the state. A lot more money than it would cost the state. That testimony was based upon an office that is in the north country: In the north country there are two offices. A legislative appropriation of \$240,000 and the testimony in the House was that that \$240,000 was leverage and brought in \$770,000 for clients that were utilized, that utilized the services of that north country office. The concerns, I think, that were raised in the Senate hearings, that some landlords had concerns with the bill. They were concerned that they would have to hire attorney's if the legal assistance office was representing tenants with problems of landlord/tenant matters. In fact, the Legal Services office does handle some landlord/tenant matters, but that is only less than ten percent of the cases that they handle. The statistics I hear, is about 7,000 out of 78,000 cases involve landlord/tenant matters. What they spend most of their time doing is working on Social Security, Medicare, domestic violence and consumer issues. The money that they are able to collect for their clients are federal dollars in the Social Security and Medicare area. We always hear in our state that we don't get enough federal money coming back into the state and this is one way that we can do it, by assisting people who are poor and helping them find federal assistance dollars. By the way, those dollars may well find their way into the pockets of some of the very landlords that actually complained about the bill. And on landlord/tenant matters, the office doesn't spend its time dealing with situations where the tenant doesn't pay its rent. It is not very difficult to evict somebody if they aren't paying their rent. What they spend their time doing to the extent that they do landlord/tenant matters are the more difficult and contested situations where there might be code violations or other problems with the offices. So while I am somewhat sympathetic to an issue that I am going to raise with the landlords in a moment, I mean the idea that they are saying you know, don't arm my opponent when I am violating the law. Doesn't, to me, make a very good reason for not supporting the bill. What the landlords did complain about that I am somewhat more sympathetic about is the way that this office is funding this through court fees. They said, gosh don't charge me a filing fee and then arm my opponent with a filing fee. So if this committee report were voted down, what the amendment that we would submit is, that the filing fees would not include landlord/tenant matters, so that the landlords, in a sense, wouldn't be funding their opponents. I am sympathetic to that part, and we are prepared, Senator O'Hearn and I, to submit an amendment issue that deals with that issue. The office, I think, is a good idea. It is going to bring more money into the state than it is going to cost. It is good policy and I would urge you to vote down the committee report.

SENATOR O'HEARN: Thank you Mr. President. I promise that I will be brief. I think that Senator Foster was very clear in what the Nashua area needs. I think that what I am asking for is to overturn the inexpedient to legislate so that we can bring this amendment forward and recognize that this money that we would be bringing to the state not taking away from the state. Thank you.

SENATOR LARSEN: Not being from Nashua, but I do in fact believe that this is an important bill. It certainly affects the southern tier and I think that those of us who have sat in Public Affairs, we have to also recognize that while we have a heavy dose of landlord/tenant issues before us, we have in fact tilted the pendulum for making it more difficult for landlord/tenant issues to come forward. We heard that only ten percent of the cases that come before the New Hampshire Legal Assistance offices relate to landlord/tenants. That means that 90 percent of the cases relate to other things which without the New Hampshire Legal Assistance offices, indigent, low income and elderly have no place to turn for legal assistance on issues like social security, SSI and other benefits, VA benefits for low income veterans. Where do they turn if it is not to New Hampshire Legal Assistance? This is an important bill. It guarantees people a right to counsel, even those who are in fact unable to pay on their own. It provides a way to pay for it. I urge you to think about this carefully and to support the amendment.

SENATOR D'ALLESANDRO: Thank you Mr. President. Very briefly. I rise against the inexpedient to legislate and for ought to pass. Only about 7,000 of the 78,000 are landlord/tenant cases. It is important for us to realize that most of the cases deal with social security, SSI disability benefits and that they save aid to the permanent and totally disabled by getting the money. They save public assistance money, they save welfare payments, off rent, utilities and food for the towns. They do recover Medicare costs and those are federal dollars that are brought in. They save Medicare costs to this state and to the county, and as I said, welfare costs. They have proved very successful in the north country. Of course we have the bulk of the cases in the south. It seems that the office in Nashua would be of tremendous benefit to citizens who are in great need. We ought to think about that because of the savings that would take place in the long run. Thank you Mr. President.

**Question is on the committee report of inexpedient to legislate.  
A roll call was requested by Senator Foster.**

**Seconded by Senator Larsen.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.**

**The following Senators voted No: Below, Peterson, O'Hearn, Foster, Larsen, D'Allesandro, Estabrook, Cohen.**

**Yeas: 15 - Nays: 8**

**Committee report of inexpedient to legislate is adopted.**

**HB 413-L, relative to certain appeals proceedings when the taxpayer prevails. Public Affairs Committee. Ought to pass, Vote 4-0. Senator Barnes for the committee.**

SENATOR BARNES: Thank you Mr. President. I move HB 413 ought to pass. This bill allows reasonable costs and attorney's fees to be assessed



against the state when a taxpayer prevails in an appeal for redetermination or reconsideration of an assessment or demand for payment by the Department of Revenue Administration. Current law favors the state and tax assessment appeals and leaves a taxpayer without the option of being made whole or fully compensated. The Public Affairs Committee feels that if the taxpayer is required to litigate to obtain a clearly defined right, and if they have successfully proven the Department of Revenue has committed a substantially unjustified action, then they should have the same opportunity as the state to recover their costs. I move that this bill ought to pass, and it was a unanimous vote of 4-0 out of the Public Affairs Committee. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 654-FN**, relative to criminal liability for the destruction or disconnection of a smoke detector by a tenant in a rental dwelling. Public Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Larsen for the committee.

**Public Affairs**

**May 14, 2003**

**2003-1632s**

**04/05**

#### **Amendment to HB 654-FN**

Amend RSA 634:2, IX as inserted by section 1 of the bill by replacing it with the following:

IX. Any person who is found guilty of criminal mischief under this section because such person is a tenant, or a guest of such tenant, in a rental dwelling who has destroyed, disconnected, or otherwise rendered inoperable any smoke detector in the rental dwelling, or who has attempted the same in a rental dwelling, shall be guilty of a misdemeanor. It shall be an affirmative defense under this paragraph if a tenant notifies a landlord that the tenant, for reasonable cause, has disconnected a smoke detector in the rental dwelling, and such notice is given to the landlord within 3 business days of the disconnection.

**2003-1632s**

#### **AMENDED ANALYSIS**

This bill makes a tenant or a guest of such tenant criminally liable for destroying, disconnecting, or rendering inoperable a smoke detector in a rental dwelling and provides that the tenant or guest of such tenant shall be guilty of a misdemeanor. The bill also provides an affirmative defense for the tenant under certain circumstances.

SENATOR LARSEN: I move HB 654 ought to pass with amendment. This bill makes a tenant or a guest of a tenant criminally liable and guilty of a misdemeanor for destroying, disconnecting, or rendering inoperable a smoke detector in a rental dwelling. The bill also provides an affirmative defense for a tenant in the event they disconnected their smoke detector and a fire occurs, but only if they have notified their landlord within 3 business days of the disconnection. By passing HB 654 we can help landlords protect their property investments and the lives of their tenants. The Public Affairs Committee recommends HB 654 ought to pass as amended.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 758-FN**, relative to the criteria for medicaid eligibility. Public Affairs Committee. Ought to pass, Vote 4-0. Senator Roberge for the committee.

**SENATOR ROBERGE:** Thank you Mr. President. I move that HB 758 ought to pass. This bill prohibits the use of certain monetary devices as a method for sheltering wealth for the purpose of Medicaid eligibility. Various types of annuities have allowed people to bypass the traditional methods for decreasing one's resources as required by the Medicaid program. House Bill 758 is an attempt to preserve the Medicaid program for individuals that are truly needy and eligible because there are too many people having their care funded through the Medicaid that undoubtedly could afford to pay for their care on their own. House Bill 758's methodology is already being used in a number of states to curtail the inconsistent use of annuities and to increase the ability of states to receive Medicaid reimbursements. Public Affairs recommends ought to pass. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 778-L**, relative to the city of Manchester school district. Public Affairs Committee. Ought to pass, Vote 4-0. Senator Morse for the committee.

**SENATOR MORSE:** Thank you Mr. President. I move HB 778 ought to pass. This legislation will allow the city of Manchester to once again put the question of incorporating the Manchester School District as a department of the city on the city's ballot. In November of 2001, during the general elections, 60.6 percent of the electorate voted in favor of the referendum question. By consolidating the departments, the city hopes to save a considerable amount of money and resources. The Public Affairs Committee recommends a motion of ought to pass and asks for your support. Thank you.

**SENATOR D'ALLESANDRO:** Thank you Mr. President. First, let me thank my colleagues in the Senate for their patience and durability. It is part of the American dream to serve and you are all doing well and I appreciate it. Having served on the school board for ten years, I want you to listen to this carefully. There has been a constant battle for years between the Manchester School Board and the Manchester Board of Mayor and Aldermen as to who really runs the show. That battle has been ongoing. We have been to court two or three times, and the School Board and the school district is looking for autonomy. The city is looking to incorporate the school district as a city department. The school district went to Superior Court and got a judgement. That judgement said that it was an independent district. This battle continues in a non-binding referendum, as alluded to by my colleague Senator Morse in his iteration of a 60 percent vote, said that they could be incorporated as part of the Manchester city government. Well the only way that they can get a referendum in the city of Manchester that counts, is you have to get authorization from the state to put it on the ballot. We have that unique system. Generally speaking, I would say that the people who represent the 14 members of the school board, would like to remain autonomous. I believe that they have testified against this piece of legislation. The district has basically been a separate entity for a long period

of time. I have given you the circumstances under which this struggle has taken place. I hope that you will consider that in your vote, that the board of school committee, is in opposition to this. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 796-FN-L**, relative to the taxation of manufactured housing. Public Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Morse for the committee.

**Public Affairs**

**May 14, 2003**

**2003-1634s**

**10/05**

**Amendment to HB 796-FN**

Amend the title of the bill by replacing it with the following:

AN ACT relative to the taxation of manufactured housing and relative to notice required prior to the sale of a recreational campground.

Amend the bill by replacing all after section 7 with the following:

8 New Sections; Recreational Campgrounds; Notice Required Before Sale. Amend RSA 216-I by inserting after section 15 the following new sections:

216-I:16 Notice Required Before Sale of Recreational Campground.

I. No recreational campground owner shall make a final unconditional acceptance of any offer for the sale or transfer of a recreational campground without first giving 60 days' notice to each owner of a recreational trailer, as defined in RSA 216-I:1, VIII(c), who pays property taxes to the municipality in which the recreational campground is located and to each owner of a manufactured home who pays property taxes to the municipality for a home used seasonally in a recreational campground. The notice shall include:

(a) That the owner intends to sell the recreational campground; and

(b) The price, terms, and conditions of an acceptable offer the campground owner has received to sell the campground, or the price, terms, and conditions for which the campground owner intends to sell the recreational campground. This notice shall include a copy of the signed written offer which sets forth a description of the property to be purchased and the price, terms, and conditions of the acceptable offer.

II. During the notice period required under paragraph I, the campground owner shall consider any offer received from the owner of the recreational trailer, owner of a manufactured home, or the owner's association, if any, and the campground owner shall negotiate in good faith with the owner of the recreational trailer, the owner of a manufactured home, or the owner's association concerning a potential purchase. If during the notice period, the owner of a recreational trailer, owner of a manufactured home, or owner's association decides to make an offer to purchase the recreational campground, such offer shall be evidenced by a purchase and sale agreement; however, the owner of the recreational trailer, owner of a manufactured home, or owner's association shall have a reasonable time beyond the 60-day period, if necessary, to obtain financing for the purchase.

III. The notice required by paragraph I shall be served by certified mail, return receipt requested, to each owner of a recreational trailer or owner of a manufactured home at such owner's abode. A receipt from the

United States Postal Service that is signed by any adult member of the household to which it was mailed, or a notation on the letter that the letter was refused by any adult member of the owner's household or that the addressee no longer resides there, or a letter which is returned to the post office unclaimed, shall constitute a conclusive presumption that service was made in any court action in this state.

216-I:17 Length of Stay. Notwithstanding any other provision of law to the contrary, any recreational trailer, as defined in RSA 216-I:1, VIII(c), or manufactured home, used seasonally and whose owner pays property taxes to the local municipality, shall be permitted to use such vehicle or home for a minimum of 5 months in a calendar year.

9 Effective Date. This act shall take effect upon its passage.

**2003-1634s**

### AMENDED ANALYSIS

This bill provides that manufactured housing shall be taxed and treated as real estate, and eliminates the separate manufactured housing tax lien system.

The bill makes a change to the definition of security interest in the uniform commercial code.

The bill also requires that notice be given to owners of recreational trailers and manufactured housing prior to the sale of a recreational campground.

SENATOR MORSE: Thank you Mr. President. I move HB 796 ought to pass with amendment. This bill provides that manufactured housing shall be taxed and treated as real estate, and eliminates the separate manufactured housing tax lien system. It will also change the definition of security interest in the uniform commercial code. House Bill 796 makes the system consistent and will eliminate the current duplicate filing of manufactured housing tax liens thus saving time and expense for our municipalities. The Town Clerks Association and Tax Collector's Association are in full support of HB 796 and the Public Affairs Committee recommends an ought to pass as amended motion. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 280-FN**, relative to the poison information center. Public Institutions, Health and Human Services Committee. Ought to pass, Vote 2-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you Mr. President. I move ought to pass on HB 280. RSA 126-A obligates the state to provide poison information and control services to New Hampshire residents. Since 1981 the Dartmouth Hitchcock Medical Center has administered and funded the center on the basis of a handshake agreement alone. However, in light of new federal certification standards, the Dartmouth Hitchcock is not prepared to continue to bear the full financial burden of a state statutory responsibility, nor is Dartmouth willing to fund a center that is not properly certified. House Bill 280 establishes an assessment on covered lives in the state to fund poison information and control services for New Hampshire's citizens and authorizes a request for proposal process from vendors to provide these services. Modeled on the vaccine immunization assessment

language, the assessment of HB 280 applies to stop loss carriers, health service corporations, health maintenance organizations and New Hampshire licensed health insurance companies. The assessment is not to general property or casualty carriers or individual insurance brokers. In addition, the Department of Health and Human Services has committed \$250,000 in federal bioterrorism funds for each of the next three years in support of the program. The committee unanimously recommends ought to pass. Let me reiterate once again Mr. President, the assessment would not apply to companies that do not have covered lives within that definition. I urge you to pass this bill. Thank you very much Mr. President.

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 677-FN**, increasing the number of reserved student slots in medical programs, and establishing a loan forgiveness program for physicians who practice in underserved areas, and making an appropriation therefor. Public Institutions, Health and Human Services Committee. Ought to pass with amendment, Vote 4-0. Senator Estabrook for the committee.

**Public Institutions, Health and Human Services**

**May 13, 2003**

**2003-1611s**

**04/05**

#### **Amendment to HB 677-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** increasing the number of reserved student slots in medical programs, establishing a reduction of medical indebtedness program for physicians who practice in underserved areas, and making an appropriation therefor.

Amend the bill by inserting after section 1 the following and renumbering the original sections 2-6 to read as 3-7, respectively:

2 Veterinary/Medical/Optometric Education Program. Amend RSA 200-J:2, II to read as follows:

II. The governor is authorized to enter into an agreement on behalf of the state with Dartmouth medical school *and other medical schools* for the purpose of providing allopathic *and osteopathic* medical education to qualified New Hampshire residents.

Amend the bill by replacing section 6 with the following

6 Veterinary/Medical Education Loan Program; Reduction of Medical Education Indebtedness. Amend RSA 200-I:5 to read as follows:

200-I:5 Forgiveness of Accounts; *Reduction of Medical Education Indebtedness.*

*I.* The commissioner of administrative services may, in case of hardship, death or other extenuating circumstances, with the approval of the fiscal committee of the general court provided for in RSA 14:30-a, extend or forgive such individual accounts as may be brought to his *or her* attention.

*II.(a) Individuals who have completed their medical education, including internships and residencies, and practice in a medically underserved area of the state, may reduce their medical education loan indebtedness by up to \$20,000 for each year of practice in such area for a maximum of 2 years, except as otherwise provided in this paragraph.*

*(b) Individuals eligible under this paragraph shall submit a certification of practice form, made available by the commissioner of the department of health and human services, for each year of practice in a medically underserved area.*

*(c) The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, relative to application procedures and designating medically underserved areas in this state.*

*(d) Funds available in the department of health and human services, office of community and public health, and any community benefits matching or pooled funds which become available pursuant to RSA 7:32-c through 7:32-l, may be used to extend the reduction of medical education indebtedness program under this paragraph.*

SENATOR ESTABROOK: Thank you Mr. President. I move ought to pass with amendment on HB 677. House Bill 677 increases from 5 to 20 the number of preferred access seats for New Hampshire residents seeking to attend medical school. The current five seats at Dartmouth do not meet current demand, nor do they reflect the states population growth since 1979 when the relationship with Dartmouth was established. The bill also allows individuals who have completed their medical education to reduce their outstanding medical education loan indebtedness for each year of practice in a medically underserved area of New Hampshire. The 150 municipalities that are considered medically underserved, salaries are usually lower due to high rates of Medicaid patients. Doctors with upwards of \$200,000 in school loans, often choose not to practice in these communities without the support this bill provides. The bill was amended to clarify that the loan reduction program is not a loan forgiveness program and the committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Referred to the Finance Committee (Rule #26).**

**HB 735-FN**, relative to prescription drugs and medicaid best practices. Public Institutions, Health and Human Services Committee. Inexpedient to legislate, Vote 4-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you Mr. President. I move inexpedient to legislate on HB 735. Although the issues that the bill raises are important to each of us, the legislature has studied prescription drug access extensively in each of the past few years and funding for the prescription drug program in HB 735 is not included in the budget. In addition, the department is already at work identifying Medicaid best practices, and the committee recommends inexpedient to legislate. I thank you Mr. President.

### **MOTION TO TABLE**

Senator Morse moved to have **HB 735-FN** laid on the table.

**Adopted.**

### **LAIID ON THE TABLE**

**HB 735-FN**, relative to prescription drugs and medicaid best practices.

**HB 638-FN**, increasing the oil import license fee, changing the rate of interest assessed on overdue oil import fees, and repealing underground storage facility permit fees. Transportation Committee. Rerefer to committee, Vote 4-0. Senator Morse for the committee.

### **MOTION TO TABLE**

Senator Morse moved to have **HB 638-FN** laid on the table.

**Adopted.**

### **LAIID ON THE TABLE**

**HB 638-FN**, increasing the oil import license fee, changing the rate of interest assessed on overdue oil import fees, and repealing underground storage facility permit fees.

**HB 519-FN-A**, relative to the conservation number plate trust fund. Ways and Means Committee. Ought to pass, Vote 2-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you Mr. President. I move ought to pass on HB 519. The bill sets aside funds for two programs from the sales of conservation license plates, each of which will not exceed \$50,000. The monies will be used to fund the promotion of the Conservation License Plate Program and for the Department of Transportation's use in planting lilacs as part of the Wildflower Establishment Program. The bill also removes the 10 percent maximum allowable administrative cost for grants made to the State Conservation Committee. Of the five agencies that receive funds for the Conservation License Plate Fund, the State Conservation Committee is the only agency subject to the 10 percent administrative limitation which is insufficient to do the necessary work. House Bill 519 has no fiscal impact on the state and the committee unanimously recommends ought to pass. Thank you Mr. President.

SENATOR GATSAS: Senator D'Allesandro, can they plant anything else other than lilacs?

SENATOR D'ALLESANDRO: Well lilac is the state plant. So I think that there is a wildflower fund and included in the wildflowers are lilacs.

SENATOR GATSAS: What color are those wildflowers?

SENATOR D'ALLESANDRO: I think that they cover the rainbow.

SENATOR GATSAS: Thank you Senator.

**Adopted.**

**Ordered to third reading.**

**HB 590-FN**, relative to highway fund budget reporting requirements. Ways and Means Committee. Ought to pass with amendment, Vote 4-0. Senator D'Allesandro for the committee.

**Senate Ways and Means**

**May 16, 2003**

**2003-1679s**

**05/10**

### **Amendment to HB 590-FN**

Amend the bill by replacing section 1 with the following:

1 New Sections; Budget and Appropriations; Allocation of Unrestricted Revenue from Highway Fund; Highway Fund Reporting Requirements. Amend RSA 9 by inserting after section 9 the following new sections:

9:9-a Collection of Highway Fund Revenue; Reporting Requirement. Pursuant to part II, article 6-a of the New Hampshire constitution, any costs associated with the collection and administration of highway funds by the department of safety shall be deducted by the department before such funds are credited to the highway fund. On or before January 1, the department shall provide an annual accounting of such administration and collection costs to the president of the senate and the speaker of the house of representatives.

9:9-b Allocation of Unrestricted Revenue from Highway Fund. In each biennium, all unrestricted revenue from the highway fund, including any surplus but excluding any betterment funds or highway block grant aid, as estimated by the commissioner of the department of administrative services in RSA 9:6, and subject to the requirements of RSA 9:4-d, shall be allocated in the operating budget as follows:

I. Department of transportation: Not less than 67 percent of unrestricted revenue.

II. Department of safety: Not to exceed 25 percent of unrestricted revenue.

III. Other projects that comply with part 2, article 6-a of the New Hampshire constitution, relative to the use of highway funds: Not to exceed 3 percent of unrestricted revenue.

9:9-c Reporting Requirement for Special Accounts or Restricted Revenue Within the Highway Fund. Each department that operates a special account within the highway fund or receives restricted revenue from a special account within the highway fund shall file a biennial report with the state treasurer on or before January 15, 2006, and every other year thereafter. The report shall include, but not be limited to:

I. Activities the special account is required or intended to carry out.

II. Identification of all revenue from the special account available to the department.

III. The amount of revenue deposited into the special account and the amount and purpose of all expenditures by the department from the account during the prior 2 fiscal years.

IV. The balance of the special account at the close of the prior 2 fiscal years.

2003-1679s

#### AMENDED ANALYSIS

This bill establishes a reporting requirement for administration and collection costs associated with highway fund revenue.

This bill allocates unrestricted revenue from the highway fund and requires any department that receives restricted revenue from the highway fund to submit a biennial report of expenditures to the state treasurer.

SENATOR D'ALLESANDRO: Thank you Mr. President. I move ought to pass with amendment on HB 590. House Bill 590 clarifies the distribution method for unrestricted revenue from the Highway Fund and requires any department that receives restricted revenue from the Highway Fund to submit a biennial report of expenditures to the state treasurer. The current distribution scheme is not subject to any distribution guidelines other than the first-come, first-serve approach. Under HB 590 as amended, the Department of Transportation will receive not less than 67 percent. Safety will receive not more than 25 percent and miscellaneous projects will receive not more than 3 percent, with 5 per-



cent left over for unanticipated situations. The committee amended the bill by adjusting the percentages to better reflect actual agency expenditures and to incorporate the constitutional requirement that the Department of Safety deduct any cost associated with the collection and administration of highway funds before those funds are credited to the Highway Fund. The committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 694-FN**, relative to tobacco product manufacturers not entering master settlement agreements. Ways and Means Committee. Ought to pass with amendment, Vote 4-0. Senator D'Allesandro for the committee.

**Senate Ways and Means**

**May 15, 2003**

**2003-1665s**

**09/01**

### **Amendment to HB 694-FN**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to tobacco product manufacturers not entering master settlement agreements and changing the tax on tobacco products other than cigarettes.

Amend the bill by replacing section 5 with the following:

5 New Paragraph; Definition; Wholesale Sales Price. Amend RSA 78:1 by inserting after paragraph III the following new paragraph:

III-a. "Wholesale sales price" means the established price for which a manufacturer sells tobacco products other than cigarettes to a wholesaler, exclusive of any discount or other reduction.

6 Tax on Cigarettes. Amend RSA 78:7 to read as follows:

78:7 Tax Imposed. A tax upon the retail consumer is hereby imposed at the rate of 52 cents for each package containing 20 cigarettes or at a rate proportional to such rate for packages containing more or less than 20 cigarettes, on all ~~[tobacco products]~~ **cigarettes** sold at retail in this state. The payment of the tax shall be evidenced by affixing stamps to the smallest packages containing the ~~[tobacco products]~~ **cigarettes** in which such products usually are sold at retail. The word "package" as used in this section shall not include individual cigarettes. No tax is imposed on any transactions, the taxation of which by this state is prohibited by the Constitution of the United States.

7 Tax on Tobacco Products Other than Cigarettes. Amend RSA 78:7-c to read as follows:

78:7-c Tax Imposed on Tobacco Products Other Than Cigarettes. A tax upon the retail consumer is hereby imposed on tobacco products other than cigarettes at a rate ~~[proportional to the cigarette tax, having such ratio to the usual wholesale price of the tobacco product other than cigarettes as the cigarette tax bears to the usual wholesale price of the cigarettes]~~ **of 19 percent of the wholesale sales price**. The tax under this section may be rounded to the nearest cent if the commissioner determines that the amount of tax would not thereby be made materially disproportionate. No such tax is imposed on any transactions, the taxation of which by this state is prohibited by the Constitution of the United States.

8 Repeal. RSA 78:1, XIV-a, relative to the definition of usual wholesale price, is repealed.

9 Effective Date.

I. Sections 6-8 of this act shall take effect July 1, 2003.

II. The remainder of this act shall take effect January 1, 2004.

**2003-1665s**

### AMENDED ANALYSIS

This bill establishes certain requirements for participating and non-participating tobacco product manufacturers to prevent violations of RSA 541-C and the tobacco Master Settlement Agreement.

The bill also changes the tax on tobacco products other than cigarettes.

SENATOR D'ALLESANDRO: Thank you Mr. President. I move ought to pass with amendment on HB 694 which updates the master tobacco settlement legislation which is the perpetual tobacco settlement. The bill authorizes the state to identify and register foreign tobacco companies selling tobacco in New Hampshire that are not currently registered and are not contributing to the settlement which will result in a small financial gain to the state. The committee amended the bill to include a provision for a 19 percent tax on the wholesale price of smokeless tobacco. The tax currently fluctuates on an annual basis and is extremely difficult to forecast. Nineteen percent reflects the average tax applied over the last few years. The committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

SENATOR MARTEL: Thank you Mr. President. Senator D'Allesandro, I have a brief question. Is that going to be including illegal cigarettes coming across the borders from the Indian tribes up in the northern country coming from Canada to the north country?

SENATOR D'ALLESANDRO: This allows, under the master settlement, for us to go after and penalize. That is correct. Those that are illegally selling tobacco.

SENATOR MARTEL: Even the Indian tribes?

SENATOR D'ALLESANDRO: Um.

SENATOR MARTEL: If you don't know, that is fine.

SENATOR D'ALLESANDRO: I don't know whether the Indian tribes are selling, but anyone who is illegal and selling, we are going to go after them.

SENATOR MARTEL: Thank you. Thank you very much.

### **Amendment adopted.**

Senator D'Allesandro offered a floor amendment.

**Sen. D'Allesandro, Dist. 20**

**May 22, 2003**

**2003-1785s**

**09/01**

### **Floor Amendment to HB 694-FN**

Amend RSA 541-D:6, I as inserted by section 1 of the bill by replacing it with the following:

I. In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that any person has violated RSA 541-D:3, III or any rule adopted pursuant thereto, the commissioner may

revoke or suspend the license of any stamping agent in the manner provided by RSA 78:6. Each stamp affixed and each offer to sell cigarettes in violation of RSA 541-D:3, III shall constitute a separate violation. For each violation hereof, the commissioner may also impose a civil penalty in an amount not to exceed the greater of 500 percent of the retail value of the cigarettes sold or \$5,000 upon a determination of violation of RSA 541-D:3, III or any rules adopted pursuant thereto. Such penalty shall be imposed in the manner provided by RSA 78 or RSA 21-J.

SENATOR D'ALLESANDRO: Thank you Mr. President. I have a further amendment that was brought forth by the Attorney General's Office. If you could pass that floor amendment out. Under the penalty section of the bill, the Department of Revenue Administration has correctly pointed out that the DRA has similar penalty authority under RSA 21-J. The amendment simply references RSA 21-J under the penalties and other remedies section of the bill. That was requested by the Attorney General's office. Thank you Mr. President.

SENATOR GATSAS: Thank you Mr. President. Senator D'Allesandro, are there stamps, tax stamps affixed to the smokeless tobacco that the state receives a revenue from?

SENATOR D'ALLESANDRO: You know, I really don't have the answer to that.

SENATOR GATSAS: Will you defer to a smoker?

SENATOR D'ALLESANDRO: I will.

SENATOR GATSAS: There is only one in the room, I think.

SENATOR CLEGG: No, there are two of us. We smoke, smoke tobacco, not smokeless. But I believe there are stamps on the cans or pouches of smokeless tobacco, yes.

SENATOR GATSAS: Thank you.

SENATOR D'ALLESANDRO: Well they have to because we have been taxing them.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 805**, establishing a consensus revenue estimating panel. Ways and Means Committee. Ought to pass with amendment, Vote 5-0. Senator D'Allesandro for the committee.

**Senate Ways and Means**

**May 16, 2003**

**2003-1671s**

**05/04**

### **Amendment to HB 805**

Amend RSA 17-Q:2, I(f) and (g) as inserted by section 1 of the bill by replacing them with the following:

(f) Three members of the business community with expertise in business and economics, appointed by the governor.

(g) Two members of the academic community, appointed by the governor.

Amend the bill by replacing all after section 1 with the following:

2 Repeal. Chapter RSA 17-Q, relative to the consensus revenue estimating panel, is repealed.

3 Effective Date.

I. Section 2 of this act shall take effect May 1, 2005.

II. The remainder of this act shall take effect 60 days after its passage.

**SENATOR D'ALLESANDRO:** Thank you Mr. President. I move ought to pass with amendment on HB 805. The Governor's revenue estimating panel was first instituted in 1997 by executive order to assist the legislature and the governor. Establishing a revenue estimating panel through legislation will provide enhanced predictability and creditability to the revenue estimating process, particularly when the legislature is not in session. The panel includes members of the business, academic and government sectors and will report back to the legislature on a quarterly basis. The committee amended the bill to correct an oversight by changing its membership from three members of the business community and two members from the academic community, and adding a sunset provision for May 1, 2005. The committee unanimously recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 806**, enabling municipalities to adopt a property tax exemption for deaf or severely hearing impaired persons. Ways and Means Committee. Ought to pass, Vote 2-0. Senator Clegg for the committee.

**SENATOR CLEGG:** Thank you Mr. President. I move ought to pass on HB 806. House Bill 806 is enabling legislation that will allow municipalities to enact property tax exemptions for people who are deaf or hard of hearing. The committee unanimously recommends ought to pass and asks for your support. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

## **RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be by this resolution read a third time and all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

## **LATE SESSION**

### **Third Reading and Final Passage**

**HB 66-FN**, relative to executive agency rulemaking authority.

**HB 75**, relative to timber harvesting.

**HB 112-FN**, establishing a point system for the annual moose permit lottery.

**HB 131**, relative to enforcement of negotiable instruments under Article 3 of the Uniform Commercial Code.

**HB 159**, relative to meetings of the directors of nondepository trust companies.

**HB 160**, relative to removal or replacement of trustees.

**HB 166**, relative to employees of the New Hampshire retirement system.

**HB 288-FN**, imposing a criminal penalty for the dissemination of certain materials without consent.

**HB 316-FN**, relative to insurance coverage for anesthesia for child dental care.

**HB 356-FN**, relative to including medical benefits costs in the purchase of creditable service in the retirement system.

**HB 387-FN**, allowing free admission to the state park system for certain members of the New Hampshire national guard.

**HB 404**, relative to common trust funds.

**HB 413-L**, relative to certain appeals proceedings when the taxpayer prevails.

**HB 446**, relative to building permits.

**HB 519-FN-A**, relative to the conservation number plate trust fund.

**HB 521-FN**, relative to requiring treatment for persons convicted of DWI offenses.

**HB 533**, relative to health carrier disclosure for medical child support enforcement.

**HB 543**, relative to increasing the membership of the board of accountancy and relative to appeals of board decisions.

**HB 565-FN-A**, establishing a commission to implement the Hampton Beach Master Plan.

**HB 571-FN-L**, relative to Old Newport Road and the end of Main Street in the town of Marlow.

**HB 578-FN-A**, establishing a program for self-certification by small quantity hazardous waste generators and making an appropriation therefor.

**HB 590-FN**, relative to highway fund budget reporting requirements.

**HB 596-FN**, relative to health plan loss information.

**HB 598-FN-A**, relative to the agriculture nutrient management program and making an appropriation therefor.

**HB 605-FN**, relative to prohibited election day activity.

**HB 606**, establishing a right-to-know study commission.

**HB 617-FN**, relative to the licensure of dentists and regulation by the board of dental examiners.

**HB 627-FN**, relative to domicile for voting purposes and penalties for voter fraud.

**HB 654-FN**, relative to criminal liability for the destruction or disconnection of a smoke detector by a tenant in a rental dwelling.

**HB 659-FN**, relative to penalties for failure to obey a subpoena or summons.

**HB 670-FN**, establishing a procedure for release by a state agency of statistical information for research purposes.

**HB 674-FN**, relative to legal representation for indigent parties and notification requirements under the Child Protection Act.

**HB 680-FN**, establishing a committee to study service contracts and repealing the law regarding legal services insurance.

**HB 684-FN**, relative to the insurance rating law.

**HB 693-FN**, relative to the jurisdiction and constitution of the ballot law commission.

**HB 694-FN**, relative to tobacco product manufacturers not entering master settlement agreements.

**HB 702-FN**, relative to payment of medical benefits costs for disabled group II members of the retirement system.

**HB 703-FN**, permitting free admission to the state park system for disabled veterans.

**HB 718-FN**, relative to endangering the welfare of a minor and relative to criminal responsibility for the commission of certain acts.

**HB 719-FN-A**, relative to the duties, function, and operation of the Pease development authority.

**HB 728-FN-A**, establishing a dedicated fund for organic certification inspections.

**HB 758-FN**, relative to the criteria for medicaid eligibility.

**HB 763-FN**, requiring parental notification before abortions may be performed on unemancipated minors.

**HB 778-L**, relative to the city of Manchester school district.

**HB 798**, relative to gifts by fiduciaries.

**HB 802-FN-A**, encouraging the department of transportation to retrofit a highway rest stop to be a solar powered facility.

**HB 805**, establishing a consensus revenue estimating panel.

**HB 806**, enabling municipalities to adopt a property tax exemption for deaf or severely hearing impaired persons.

**HB 807-FN**, increasing the filing fees for a fund raising counsel and a paid solicitor of a charitable trust.

**HB 816**, making technical corrections to the securities laws.

**HB 817**, relative to the regulation of first and second mortgage brokers and mortgage servicers.

**HB 825**, establishing a committee to study methods of safely reducing the prison population in the state.

**HB 834-L**, relative to River Road and Nimble Hill Road in the town of Newington.

**HCR 15**, relative to relaxing air quality standards by the United States Environmental Protection Agency.

## ANNOUNCEMENTS

### RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of receiving House Messages and processing Enrolled Bill Reports and Amendments, and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

**In recess to the Call of the Chair.**

**Out of Recess.****HOUSE MESSAGE**

The House of Representatives accedes to the request of the Senate for a Committee of Conference on the following entitled Bill:

**SB 41-FN**, relative to the installation of airbags.

and the Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Packard, Bergeron, Ferland & Letourneau

**May 22, 2003**

**2003-1772-EBA**

**03/01**

**Enrolled Bill Amendment to HB 593-FN-LOCAL**

The Committee on Enrolled Bills to which was referred HB 593-FN-LOCAL AN ACT relative to solid waste facilities in small towns.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE****Explanation to Enrolled Bill Amendment to HB 593-FN-LOCAL**

This enrolled bill amendment makes technical corrections.

**Enrolled Bill Amendment to HB 593-FN-LOCAL**

Amend RSA 149-M:9, XIII(a) as inserted by section 1 of the bill by replacing lines 1-2 with the following:

XIII.(a) No permit issued by the department to a town with a population of 5,000 persons or fewer shall require the town to clean up an inactive, municipally-owned, unlined landfill (inactive

Amend RSA 149-M:9, XIII(c) as inserted by section 1 of the bill by replacing it with the following:

(c) This paragraph shall not apply to those facilities governed under the terms of 40 C.F.R. part 258.

Senator Eaton moved adoption.

**Adopted.**

**May 21, 2003**

**2003-1732-EBA**

**08/01**

**Enrolled Bill Amendment to HB 278-FN**

The Committee on Enrolled Bills to which was referred HB 278-FN AN ACT relative to certain acts of sexual assault.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE****Explanation to Enrolled Bill Amendment to HB 278-FN**

This enrolled bill amendment makes a technical correction.

**Enrolled Bill Amendment to HB 278-FN**

Amend RSA 632-A:4, II as inserted by section 1 of the bill by replacing line 1 with the following:

II. A person found guilty under subparagraph I(b) of this section shall not be required to

Senator Eaton moved adoption.

**Adopted.**

**May 21, 2003**

**2003-1747-EBA**

**08/10**

**Enrolled Bill Amendment to HB 711-FN**

The Committee on Enrolled Bills to which was referred HB 711-FN  
AN ACT relative to the regulation of retail installment sales of motor vehicles.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE**

**Explanation to Enrolled Bill Amendment to HB 711-FN**

This enrolled bill amendment makes various technical corrections.

**Enrolled Bill Amendment to HB 711-FN**

Amend RSA 361-A:2, VIII(a) as inserted by section 4 of the bill by replacing line 2 with the following:  
payment of the required application fee, if the commissioner determines that the applicant's

Amend RSA 361-A:2-b, I(c) as inserted by section 5 of the bill by replacing line 2 with the following:  
of their most recent Securities and Exchange Commission Form 10-K and Form 10-Q statements.

Amend RSA 361-A:3 as inserted by section 6 of the bill by replacing paragraphs IV and V with the following:

IV. If the commissioner finds that any licensee or applicant for license is no longer in existence or has ceased to do business as a retail seller or sales finance company, or cannot be located after reasonable search, the commissioner may by order revoke the license or deny the application. The commissioner may deem abandoned and withdraw any application for licensure made pursuant to this chapter, if any applicant fails to respond in writing within 180 days to a written request from the commissioner requesting a response. Such request shall be sent via certified mail to the last known address of the applicant that is on file with the commissioner.

Senator Eaton moved adoption.

**Adopted.**

**May 22, 2003**

**2003-1789-EBA**

**03/09**

**Enrolled Bill Amendment to SB 82-FN**

The Committee on Enrolled Bills to which was referred SB 82-FN

AN ACT relative to awards of fees and interest under workers' compensation.



Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

#### FOR THE COMMITTEE

#### **Explanation to Enrolled Bill Amendment to SB 82-FN**

This enrolled bill amendment modifies RSA subparagraph designations within RSA 281-A:44, I as inserted by the bill, inserts an RSA section title omitted from the bill, and makes technical corrections.

#### **Enrolled Bill Amendment to SB 82-FN**

Amend section 2 of the bill by replacing lines 1-15 with the following:

2 Workers' Compensation; Awards of Fees and Interest. Amend RSA 281-A:44 to read as follows:

281-A:44 Award of Fees and Interest.

I.(a) In any dispute over the amount of the benefit payable under this chapter which is appealed to the board or supreme court or both, the employee, if such employee prevails, shall be entitled to reasonable counsel fees and costs as approved by the board or court and interest ~~[at the rate of 10 percent per year]~~ on that portion of any award the payment of which is contested. ~~[The interest shall be computed from the date of injury.]~~ ***For the purposes of this paragraph, to "prevail" means:***

***(1) If the employee is the appealing party, the employee shall have received an award for disability benefits, medical, hospital, and remedial care, a scheduled permanent impairment award, vocational rehabilitation, or reinstatement of the employee, which is greater in amount than awarded by the decision which is the subject of the appeal; or***

***(2) If the appeal is by the employer or insurance carrier, the appealed decision shall have been affirmed.***

***(b) If the insurance carrier appeals multiple issues and the employee prevails***

Amend RSA 281-A:44, V as inserted by section 2 of the bill by replacing line 2 with the following:

***only on amounts which have been paid directly by the employee and not by a third party, in***

Senator Eaton moved adoption.

**Adopted.**

**May 21, 2003**

**2003-1751-EBA**

**04/10**

#### **Enrolled Bill Amendment to SB 101-FN**

The Committee on Enrolled Bills to which was referred SB 101-FN

AN ACT relative to unemployment compensation.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

#### FOR THE COMMITTEE

#### **Explanation to Enrolled Bill Amendment to SB 101-FN**

This enrolled bill amendment makes certain technical corrections.

#### **Enrolled Bill Amendment to SB 101-FN**

Amend section 3 of the bill by replacing line 2 with the following: after subparagraph (B) the following new subparagraph:

Amend RSA 282-A:36, II-a as inserted by section 7 of the bill by replacing line 3 with the following:  
and his **or her** employees; or

Amend section 10 of the bill by replacing lines 1-3 with the following:  
10 Unemployment Compensation. Amend RSA 282-A:152, I to read as follows:

I. Whenever used in this subdivision, unless the context shall otherwise require, or unless

Amend section 13 of the bill by replacing line 1 with the following:

13 Agreement Authorized. Amend RSA 282-A:178, II(a) to read

Amend section 15 of the bill by replacing line 3 with the following:

VII. For the purposes of paragraph I, the exclusions under subparagraphs IV (o)(2), IV (o)(5),

Senator Eaton moved adoption.

**Adopted.**

**May 21, 2003**

**2003-1730-EBA**

**06/01**

### **Enrolled Bill Amendment to SJR 1**

The Committee on Enrolled Bills to which was referred SJR 1

AN ACT approving certain uses of Weeks state park.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

### **FOR THE COMMITTEE**

### **Explanation to Enrolled Bill Amendment to SJR 1**

This enrolled bill amendment makes 2 technical corrections.

### **Enrolled Bill Amendment to SJR 1**

Amend the fourth paragraph following the resolving clause of the resolution by replacing line 2 with the following:  
ancillary structures shall be approved by the Weeks State Park Association.

Amend the fifth paragraph following the resolving clause of the resolution by replacing line 3 with the following:  
equipment shall be remitted to the department of resources and economic development, division of

Senator Eaton moved adoption.

**Adopted.**

**May 21, 2003**

**2003-1739-EBA**

**06/09**

### **Enrolled Bill Amendment to SB 43**

The Committee on Enrolled Bills to which was referred SB 43

AN ACT relative to archives and records management.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

## FOR THE COMMITTEE

**Explanation to Enrolled Bill Amendment to SB 43**

This enrolled bill amendment makes a correction to a statutory reference.

**Enrolled Bill Amendment to SB 43**

Amend RSA 228:43 as inserted by section 3 of the bill by replacing line 4 with the following:

**and** records management [~~and archives~~], as promulgated under RSA [8-B:17] **5:40**, may provide that

Senator Eaton moved adoption.

**Adopted.**

**LATE SESSION**

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*May 29, 2003*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good Morning! I'd like to read you part of a letter that I received yesterday from Iraq:

Dear Father David, Well, first of all, I would like to thank you for writing. You would not believe what mail does for my morale. It helps when you have people back home supporting what you are doing. I would also like you to tell everyone that although what I do is not easy, it really helps me when I think about why I do what I do – that the people at home are all safe. I am always proud to say that I would give my life for anyone in St. Paul's. I can tell you, Father David, that I have seen some horrible things in this world and I am glad that it is me seeing these things and not anyone I know or love. I will try to write again soon. Brad.

No matter the political issues over here, or over there, no matter your thoughts about war, no matter the financial wrangling, the partisan strategizing or the personality differences – it is good to be reminded that kids like Brad are why you are willing and why we need you to do this for \$100 a year. Let us pray:

*Loving Creator, You are able to call forth acts of astonishing courage and breathtaking wisdom from even the most unlikely sources. Use us today, good God, for Your higher purposes and for Your greater good, that what we give our lives to and what we risk them for may bring to those we serve safety, pride, and dignity.*

*Amen.*

Senator D'Allesandro led the Pledge of Allegiance.

**INTRODUCTION OF GUESTS****HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 40**, relative to filing of complaints for violation-level offenses and making the electronic submission of a false statement chargeable as unsworn falsification.

#### **SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 40**, relative to filing of complaints for violation-level offenses and making the electronic submission of a false statement chargeable as unsworn falsification.

Senator Peterson moved to concur.

**Adopted.**

#### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 94-FN**, requiring criminal conviction record checks for employees working in long-term care facilities and in home health care and for applicants for a license from the board of nursing.

#### **SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 94-FN**, requiring criminal conviction record checks for employees working in long-term care facilities and in home health care and for applicants for a license from the board of nursing.

Senator Peterson moved to concur.

**Adopted.**

#### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 114**, implementing an unsafe school choice option for pupils attending schools which have been classified as persistently dangerous and authorizing the state board of education to implement a complaint process to address school safety and school violence issues in nonpublic schools.

#### **SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 114**, implementing an unsafe school choice option for pupils attending schools which have been classified as persistently dangerous and authorizing the state board of education to implement a complaint process to address school safety and school violence issues in nonpublic schools.

Senator O'Hearn moved to concur.

**Adopted.**

#### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 135**, relative to hotel keeper liability for personal care services.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 135**, relative to hotel keeper liability for personal care services.

Senator Flanders moved to concur.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 139**, relative to exhibition fees charged by the boxing and wrestling commission.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 139**, relative to exhibition fees charged by the boxing and wrestling commission.

Senator Roberge moved to concur.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 221-FN**, relative to the offense of obstructing government administration by the use of simulated legal process.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 221-FN**, relative to the offense of obstructing government administration by the use of simulated legal process.

Senator Peterson moved to concur.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 98-FN**, prohibiting telemarketers from contacting customers on a federal do-not-call registry.

**SENATE NONCONCURS AND REQUESTS  
A COMMITTEE OF CONFERENCE**

**SB 98-FN**, prohibiting telemarketers from contacting customers on a federal do-not-call registry.

Senator Roberge moved to nonconcur and requests a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as member of said Committee of Conference:

**SENATORS:** Boyce, Roberge, Larsen

**CONFEREE CHANGE:** Senator Green is replacing Senator Boyce.

**CONFEREE CHANGE:** Senator Estabrook is replacing Senator Larsen.

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 121-FN**, relative to mortgage originator registration.

**SENATE NONCONCURS AND REQUESTS  
A COMMITTEE OF CONFERENCE**

**SB 121-FN**, relative to mortgage originator registration.

Senator Flanders moved to nonconcur and requests a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as member of said Committee of Conference:

**SENATORS:** Flanders, Sapareto, Larsen

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 174**, relative to scheduled permanent impairment awards and remedial care under workers' compensation.

**SENATE NONCONCURS AND REQUESTS  
A COMMITTEE OF CONFERENCE**

**SB 174**, relative to scheduled permanent impairment awards and remedial care under workers' compensation.

Senator Flanders moved to nonconcur and requests a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as member of said Committee of Conference:

**SENATORS:** Johnson, Flanders, Cohen

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 72**, relative to the regulation of small loans, title loans, and payday loans.

**SENATE NONCONCURS AND REQUESTS  
A COMMITTEE OF CONFERENCE**

**SB 72**, relative to the regulation of small loans, title loans, and payday loans.

Senator Flanders moved to nonconcur and requests a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** D'Allesandro, Flanders, Barnes

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 185**, relative to pretermitted heirs.

and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Rowe, John Pratt, Haytayan and Sorg.

**SENATE ACCEDES TO HOUSE REQUEST FOR  
A COMMITTEE OF CONFERENCE**

**HB 185**, relative to pretermitted heirs.

Senator Peterson moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Peterson, Roberge, Foster

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 195**, prohibiting all part-time district court judges and district court clerks from practicing law in the district courts.

and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Rowe, John Pratt, Wall and Haytayan.

**SENATE ACCEDES TO HOUSE REQUEST FOR  
A COMMITTEE OF CONFERENCE**

**HB 195**, prohibiting all part-time district court judges and district court clerks from practicing law in the district courts.

Senator Peterson moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Peterson, Clegg, Foster

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 481**, establishing a committee to study the pricing of milk products. and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Hunt, Quandt, Holden and Meader.

**SENATE ACCEDES TO HOUSE REQUEST FOR  
A COMMITTEE OF CONFERENCE**

**HB 481**, establishing a committee to study the pricing of milk products.

Senator Gallus moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Barnes, Odell, Cohen

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 768**, establishing a committee to study the flow in the Connecticut River and the effect of the flow on water levels in Lake Francis and the Connecticut Lakes, and to study the use of certain state-owned property along the Baker River.

and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Lawton, D.L. Chris Christensen, C. LaFlamme and Brueggemann.

**SENATE ACCEDES TO HOUSE REQUEST FOR  
A COMMITTEE OF CONFERENCE**

**HB 768**, establishing a committee to study the flow in the Connecticut River and the effect of the flow on water levels in Lake Francis and the Connecticut Lakes, and to study the use of certain state-owned property along the Baker River.

Senator Gallus moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Johnson, Gallus, Below

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 811**, relative to limiting the liability of manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from misuse.

and requests a Committee of Conference.



The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Rowe, James Wheeler, Dudley and Haytayan.

**SENATE ACCEDES TO HOUSE REQUEST FOR  
A COMMITTEE OF CONFERENCE**

**HB 811**, relative to limiting the liability of manufacturers, distributors, dealers, or importers of firearms or ammunition for damages resulting from misuse.

Senator Gallus moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Clegg, Gallus, D'allesandro

**COMMITTEE REPORTS**

**HB 139**, relative to the collection and reporting of school drop-out, suspension, and expulsion data and relative to the deadlines for submitting certain reports to the department of education. Education Committee. Ought to pass with amendment, Vote 2-0. Senator Johnson for the committee.

**Senate Education**

**May 21, 2003**

**2003-1744s**

**04/05**

**Amendment to HB 139**

Amend the bill by replacing all after the enacting clause with the following:

1 Adequate Public Education; Reporting on the Delivery of Education. RSA 193-E:3 is repealed and reenacted to read as follows:

193-E:3 Reporting on the Delivery of Education.

I. By August 1, 2003, and annually thereafter, each school district shall report data to the department of education, at the school and district levels for the previous school year, on the following indicators, provided that the department shall develop a reasonable schedule to phase-in the reporting of data that is not being collected systematically during school year 2002-2003:

(a) Numbers and percentages of pupils with disabilities, limited English proficient pupils, pupils in advanced placement programs, economically disadvantaged pupils, and pupils of major racial and ethnic groups.

(b) Annual and cumulative dropout rates for high schools and annual dropout rates for grades 7 and 8.

(c) Performance on statewide tests administered pursuant to RSA 193-C:3, IV(i) including the percentage of pupils reading at grade level on the reading component of the grade 3 statewide educational assessment.

(d) Percentage of graduating pupils going on to post-secondary education and military service.

(e) Number and percentage of classes taught by highly qualified teachers.

(f) Teacher and administrator turnover rates at the school and district levels.

II. The department of education, with the approval of the legislative oversight committee established in RSA 193-C:7, may implement and report data on any additional indicators deemed relevant to the purposes of this section.

III. In order to reduce school districts' administrative time and costs, the department of education shall develop and utilize user-friendly, computer forms and programs to collect the data set forth in paragraph I and all enrollment and cost data related to determining the cost of an adequate education.

IV.(a) Not later than December 1, 2003, and annually thereafter, the department of education shall issue a public report on the condition of education statewide and on a district-by-district and school-by-school basis. This report shall be entitled "New Hampshire School District Profiles" and shall be made available at every school administrative unit for public review. It shall include demographic and pupil performance data reported in paragraph I and other relevant statistics as determined by the department of education. Comparisons with state averages shall be provided for all data reported. Comparisons of each district and school to itself based on its own performance for the prior school year and its most recent 3-year rolling averages shall be provided. Statewide rankings of each district and school shall be provided, including a statewide ranking of each school and school district based on the percentage increase of improvement as compared with the same school district's performance in the previous year. The report shall be organized and presented in a manner that is easily understood by the public and that assists each school district with the identification of trends, strengths, and weaknesses and the development of its local school education improvement plan.

(b) A school or school district designated as in need of improvement under this paragraph shall have 30 days from the date of the report to appeal such designation to the commissioner of the department of education.

V. The department of education shall promote school improvement through annual recognition as deemed appropriate.

2 Statistical Reports. RSA 189:28 is repealed and reenacted to read as follows:

189:28 Statistical Reports; Failure to File Report.

I. School boards of every school district or city maintaining a school department within its corporate organization, and the board of trustees of approved public academies, shall, on or before September 1 in each year, submit to the department of education those statistical reports necessary to compute the average daily membership of pupils in attendance and the average daily membership in residence. Information relating to the fall enrollment, drop-outs, teacher and administrator census, and average teacher salary, as of October 1 of each school year, shall be submitted to the department of education on or before October 15.

II. The information needed to determine compliance with performance or accountability measures of the school district or city maintaining a school department within its corporate organization under RSA 193-E:3, shall be submitted to the department of education in a timely manner as determined by the department of education. If the department of education requests verification of information submitted, the school district or city maintaining a school department within its corporate organization shall provide corrected information or verification within 10 business days of such request. A school district or city maintaining a school department

within its corporate organization shall maintain files of all records, data, and other information submitted pursuant to this section for not less than 5 years from the date of submission.

III. Each statistical report submitted under this section shall include a certification, signed by the superintendent of the school district, that states: "I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete." The statistical report shall also include a certification, signed by the chairperson of the school district's governing body or the chairperson of the board of trustees of approved public academies, that states: "I certify, that, to the best of my knowledge, all of the information contained in this document is true, accurate, and complete."

IV. The commissioner of the department of education may grant a school district or city maintaining a school department within its corporate organization up to a 30-day extension of the reporting deadlines. The commissioner of the department of education shall notify the governing body of the school district or city maintaining a school department within its corporate organization that all state aid to education and all federal aid, if the report is required by federal law, shall be withheld until such time as complete and accurate information is submitted.

3 Submission of Data. Amend RSA 198:45 is repealed and reenacted to read as follows:

198:45 Submission of Data. School boards of every school district or city maintaining a school department within its corporate organization, and the board of trustees of approved public academies shall submit all records, data, or other information required under this subdivision in accordance with the provisions of RSA 189:28.

4 Penalty for Failure to File Report. RSA 198:4-f is repealed and reenacted to read as follows:

198:4-f Penalty for Failure to File Report. A school district or city maintaining a school department within its corporate organization shall file the report due under RSA 198:4-d, III no later than September 1 of each year. For just cause, the commissioner of the department of education may grant a school district or city maintaining a school department within its corporate organization up to a 30-day extension to this reporting deadline. The commissioner may further extend the deadline when unusual or unforeseen circumstances prevent a school district or a city maintaining a school department within its corporate organization from submitting the required report before the expiration of the extension provided in this section. The commissioner shall notify the governing body of the school district or city maintaining a school department within its corporate organization that all state aid to education shall be withheld until complete and accurate information is submitted.

5 Effective Date. This act shall take effect 60 days after its passage.

**2003-1744s**

#### AMENDED ANALYSIS

This bill provides for the collection and reporting of certain school dropout, suspension, and expulsion data and makes certain changes to the deadlines for a school district and city maintaining a school department within its corporate organization to submit certain reports to the department of education.

SENATOR JOHNSON: Thank you Mr. President. I move HB 139 ought to pass with amendment. This legislation helps improve the information collected pertaining to dropouts and students expelled and suspended.

This information will be more accurate and complete because these figures will be cumulative. Students will also be disaggregated in order to determine how our schools are doing with low-income students, students with disabilities and students with english as a second language. The amendment to the bill aligns language with the school accountability bill. Having a better understanding of the current dropout situation will help the decisions legislators, teachers, and community leaders make in order to successfully address dropout rates in this state. The Education Committee asks for your support for the motion of ought to pass with amendment. Thank you.

**Amendment adopted.**

Senator O'Hearn offered a floor amendment.

Sen. O'Hearn, Dist. 12

**May 29, 2003**

**2003-1866s**

**04/10**

**Floor Amendment to HB 139**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to the collection and reporting of school drop-out, suspension, and expulsion data and relative to the deadlines for submitting certain reports to the department of education, and establishing a statewide education accountability system.

Amend the bill by replacing all after the enacting clause with the following:

1 Statistical Reports. RSA 189:28 is repealed and reenacted to read as follows:

189:28 Statistical Reports; Failure to File Report.

I. School boards of every school district or city maintaining a school department within its corporate organization, and the board of trustees of approved public academies, shall, on or before September 1 in each year, submit to the department of education those statistical reports necessary to compute the average daily membership of pupils in attendance and the average daily membership in residence. Information relating to the fall enrollment, drop-outs, teacher and administrator census, and average teacher salary, as of October 1 of each school year, shall be submitted to the department of education on or before October 15.

II. The information needed to determine compliance with performance or accountability measures of the school district or city maintaining a school department within its corporate organization under RSA 193-E:3, shall be submitted to the department of education in a timely manner as determined by the department of education. If the department of education requests verification of information submitted, the school district or city maintaining a school department within its corporate organization shall provide corrected information or verification within 10 business days of such request. A school district or city maintaining a school department within its corporate organization shall maintain files of all records, data, and other information submitted pursuant to this section for not less than 5 years from the date of submission.

III. Each statistical report submitted under this section shall include a certification, signed by the superintendent of the school district, that states: "I certify, under the pains and penalties of perjury, that all of the information contained in this document is true, accurate, and complete." The statistical report shall also include a certification, signed by the

chairperson of the school district's governing body or the chairperson of the board of trustees of approved public academies, that states: "I certify, that, to the best of my knowledge, all of the information contained in this document is true, accurate, and complete."

IV. The commissioner of the department of education may grant a school district or city maintaining a school department within its corporate organization up to a 30-day extension of the reporting deadlines. The commissioner of the department of education shall notify the governing body of the school district or city maintaining a school department within its corporate organization that all state aid to education and all federal aid, if the report is required by federal law, shall be withheld until such time as complete and accurate information is submitted.

2 Submission of Data. Amend RSA 198:45 is repealed and reenacted to read as follows:

198:45 Submission of Data. School boards of every school district or city maintaining a school department within its corporate organization, and the board of trustees of approved public academies shall submit all records, data, or other information required under this subdivision in accordance with the provisions of RSA 189:28.

3 Penalty for Failure to File Report. RSA 198:4-f is repealed and reenacted to read as follows:

198:4-f Penalty for Failure to File Report. A school district or city maintaining a school department within its corporate organization shall file the report due under RSA 198:4-d, III no later than September 1 of each year. For just cause, the commissioner of the department of education may grant a school district or city maintaining a school department within its corporate organization up to a 30-day extension to this reporting deadline. The commissioner may further extend the deadline when unusual or unforeseen circumstances prevent a school district or a city maintaining a school department within its corporate organization from submitting the required report before the expiration of the extension provided in this section. The commissioner shall notify the governing body of the school district or city maintaining a school department within its corporate organization that all state aid to education shall be withheld until complete and accurate information is submitted.

4 Policy and Purpose. The general court hereby establishes a statewide accountability system to ensure that public schools are providing all students an opportunity to receive an adequate public education as set forth in RSA 193-E:1-2. A comprehensive, statewide educational accountability system should include:

I. Statewide targets for all schools.

II. Systematic measurement of school performance at the state and local level using multiple valid measures.

III. Reporting on pupil performance at the school, school district, and state levels.

IV. The opportunity for schools that are not making satisfactory progress toward statutory targets to receive assistance from the state, including assistance with the development, implementation, and evaluation of local education improvement plans designed to meet state targets and any performance goals developed locally to meet identified educational needs.

V. A statewide system of recognition of achievement for schools that meet or exceed statewide targets and strategic responses for schools that do not meet these targets.

5 Adequate Public Education; Reporting on the Delivery of Education. RSA 193-E:3 is repealed and reenacted to read as follows:

**193-E:3 Reporting on the Delivery of Education.**

I. By August 1, 2003, and annually thereafter, each school district shall report data to the department of education, at the school and district levels for the previous school year, on the following indicators, provided that the department shall develop a reasonable schedule to phase-in the reporting of data that is not being collected systematically during school year 2002-2003:

(a) Numbers and percentages of pupils with disabilities, limited English proficient pupils, pupils in advanced placement programs, economically disadvantaged pupils, and pupils of major racial and ethnic groups.

(b) Annual and cumulative dropout rates for high schools and annual dropout rates for grades 7 and 8.

(c) Performance on statewide tests administered pursuant to RSA 193-C:3, IV(i) including the percentage of pupils reading at grade level on the reading component of the grade 3 statewide educational assessment.

(d) Percentage of graduating pupils going on to postsecondary education and military service.

(e) Number and percentage of classes taught by highly qualified teachers.

(f) Teacher and administrator turnover rates at the school and district levels.

(g) Expulsion and suspension rates, including in-house suspensions and partial day suspensions which shall be reported for each school year.

II. By August 1, 2003, and annually thereafter, each school district shall report to the department of education data at the school and district levels for the previous school year.

III. The department of education, with the approval of the legislative oversight committee established in RSA 193-C:7, may implement and report data on any additional indicators deemed relevant to the purposes of this section.

IV. In order to reduce school districts' administrative time and costs, the department of education shall develop and utilize user-friendly, computer forms and programs to collect the data set forth in paragraph I and all enrollment and cost data related to determining the cost of an adequate education. The department shall request funds as part of its biennial operating budget to develop, update, and maintain the required forms and programs.

V. Not later than December 1, 2003, and annually thereafter, the department of education shall issue a public report on the condition of education statewide and on a district-by-district and school-by-school basis. This report shall be entitled "New Hampshire School District Profiles." It shall include demographic and pupil performance data reported in paragraph I and other relevant statistics as determined by the department of education. Comparisons with state averages shall be provided for all data reported. Comparisons of each district and school to itself based on its own performance for the prior school year and its most recent three-year rolling averages shall be provided. Statewide rankings of each district and school shall be provided, including a statewide ranking of each school and school district based on the percentage increase of improvement as compared with the same school district's performance in the previous year. The report shall be organized and presented in a manner that is easily understood by the public and that assists each school district with the identification of trends, strengths, and weak-

nesses and the development of its local school education improvement plan. The local school district shall provide a copy of the report to the public upon request.

6 New Chapter; School Performance and Accountability. Amend RSA by inserting after chapter 193-F the following new chapter:

## CHAPTER 193-G

### SCHOOL PERFORMANCE AND ACCOUNTABILITY

193-G:1 Definitions. In this chapter:

I. "Adequate yearly progress" means that measure of school performance as defined in 34 C.F.R sections 200.13 through 200.18.

II. "Commissioner" means the commissioner of the department of education.

III. "Department" means the department of education.

IV. "Highly qualified teacher" means a person who is certified by the department of education and who has demonstrated, through a process approved by the department of education, teaching skills in the core subjects of instruction.

V. "Statewide assessment" means the New Hampshire education improvement and assessment program as established under RSA 193-C.

193-G:2 Statewide Targets.

I. On or before the 2013-2014 school year, schools shall ensure that all pupils are performing at the basic level or above on the statewide assessment as established in RSA 193-C.

II. In addition to the requirements of paragraph I, schools shall meet statewide targets as established in rules adopted by the state board of education pursuant to RSA 541-A, relative to 3<sup>rd</sup> grade reading.

III. Schools shall meet statewide targets as established in rules adopted pursuant to RSA 541-A, relative to the statewide assessment.

IV. Schools shall meet statewide targets as established in rules, adopted pursuant to RSA 541-A, relative to retention rate.

V. Schools shall meet statewide targets as established in rules, adopted pursuant to RSA 541-A, relative to the percentage of pupils who graduate with a regular diploma from an approved high school.

193-G:3 Identification and Public Disclosure.

I. The commissioner shall annually compile and disseminate to the governor and council, the president of the senate, the speaker of the house, local school boards, superintendents of schools, the public, and shall make available on the department website, a list of schools that are not meeting the statewide targets set forth in RSA 193-G:2.

II. The department shall notify schools identified under this section of the availability of technical assistance. The department shall provide technical assistance to the school districts upon request.

193-G:4 State Assistance to Local School Districts; Education Improvement Fund Established.

I. There is hereby established a local education improvement fund in the state treasury for the purpose of providing assistance to local school districts. This fund shall be non-lapsing.

II.(a) The department of education is authorized to use the amount transferred to the education improvement fund, in addition to any available federal funds for similar purposes, for any of the following purposes:

(1) To support and administer the local education improvement plan program.

(2) To collect, analyze, and report the demographic and educational improvement data.

(3) To administer the grade 3 reading component of the assessment program.

(4) To assist local school staff with the analysis and use of school performance data.

(5) To provide grants as available to school districts for local school improvement.

(6) To provide a system of annual recognition to identify best practices and promote school improvement.

(b) For the biennium beginning July 1, 2003, and every biennium thereafter, appropriations from the fund shall be authorized by the legislative fiscal committee and the governor and council.

(c) Moneys transferred to the education improvement fund shall not be transferred, diverted, or used for any purpose not specified in this section.

III. The priority for the use of any state funds shall be given to lower-performing non Title I schools.

193-G:5 Local Education Improvement Plan and Strategic Responses.

I.(a) Each school district appearing on the list required under RSA 193-G:3, shall develop and implement a local education improvement plan. The plan shall be reviewed annually and shall be included in the school district's annual report. The development and implementation of the plan and review shall be carried out with input from administrators, teachers, parents, employers, and other community members. The plan shall be approved by the local school board by December 31 of the year in which a school is identified for disclosure and a copy shall be forwarded to the department of education.

(b) At a minimum, each plan shall:

(1) Identify the area in which the school failed to meet the annual statewide targets established under RSA 193-G:2.

(2) Identify and describe the strategy the school intends to implement to improve its performance.

(3) Establish and explain a strategy designed to promote family and community involvement.

(4) Detail how the school district budget reflects the goals of the local education improvement plan.

II. In addition to the provisions of subparagraph I(b), each plan may include the following elements:

(a) The school's curriculum including curricular priorities and instructional materials.

(b) Instructional models that incorporate research-based practices that have been proven to be effective in improving student achievement.

(c) Formal and informal opportunities to assess and monitor each child's progress.

(d) Evidence of data-based decisions.

(e) Structural reform strategies that may include schedule, organization, support mechanisms, and resources.

(f) Shared leadership structure to support school improvement.

(g) Professional development that is aligned with school improvement goals.

(h) External support and resources based on their effectiveness and alignment with school improvement plan.

(i) Extended learning activities for students.

193-G:6 Education Improvement Fund Established.

I. There is hereby established a local education improvement fund in the state treasury for the purpose of providing assistance to local school districts. This fund shall be non-lapsing.



II.(a) The department of education is authorized to use the amount transferred to the education improvement fund, in addition to any available federal funds for similar purposes, for any of the following purposes:

(1) To support and administer the local education improvement plan program.

(2) To collect, analyze, and report the demographic and educational improvement data.

(3) To assist local school staff with the analysis and use of school performance data.

(4) To provide grants as available to school districts for local school improvement.

(5) To provide a system of annual recognition to identify best practices and promote school improvement.

(b) For the biennium beginning July 1, 2003, and every biennium thereafter, appropriations from the fund shall be authorized by the legislative fiscal committee and the governor and council.

(c) Moneys transferred to the education improvement fund shall not be transferred, diverted, or used for any purpose not specified in this section.

III. The priority for the use of any state funds shall be given to lower-performing non Title I schools.

193-G:7 Powers of the Department of Education. Nothing in this chapter shall be construed to permit either the department of education or the state board of education to take control of the daily operations of any local public school.

7 New Subparagraphs; Statewide Education Improvement and Assessment Program; Program Goals Amended. Amend RSA 193-C:3, IV by inserting after subparagraph (h) the following new subparagraphs:

(i) At the end of grade 3, to determine if pupils are reading at grade level on a standardized reading test to be developed by the department as part of a statewide assessment system.

(j) At the school, district, and state levels, to provide performance reports on specific subgroups of pupils as required by federal law.

8 New Subparagraph; State Board of Education; Rulemaking. Amend RSA 21-N:9, II by inserting after subparagraph (bb) the following new subparagraph:

(cc) School accountability, performance standards, strategic responses, and statewide targets as required by applicable federal law and in accordance with RSA 193-G.

9 Statewide Education Improvement and Assessment; Duties of the Legislative Oversight Committee. RSA 193-C:8 is repealed and reenacted to read as follows:

193-C:8 Duties of the Legislative Oversight Committee. The committee shall:

I. Review the development and implementation of the program to ensure that they are in accordance with legislative policy. Implementation of the program shall be in conjunction with the committee's review.

II. Review the provisions of RSA 193-G and submit a report of such review every 2 years after the effective date of this section to the speaker of the house of representatives, the president of the senate, the governor, and the chairpersons of the house and senate education committees.

III. Prepare legislation that is needed as a result of the review of the progress and results of the policies implemented under this chapter, including any changes necessitated by federal law.

IV. Confer with the commissioner and the state board of education to identify operational principles, which should guide the work of the department of education in supporting improved school performance and accountability.

V. Analyze existing department of education programs and initiatives which support improved school performance and accountability.

VI. Receive reports from the commissioner regarding the status of public education in New Hampshire, updates on the improvement made by local school districts toward achieving satisfactory progress in state-wide student performance under RSA 193-G:2 and status reports on the on-going issues and implications of school accountability at the state and federal level. Reports by the commissioner shall occur at least once annually and more frequently as needed, as determined by the committee and the commissioner.

VII. Receive reports from the state board of education regarding any rules proposed pursuant to RSA 193-G:2 prior to the submission of those rules to the joint legislative committee on administrative rules.

10 Repeal. The following are repealed:

I. RSA 194:23-d, relative to state financial aid.

II. Section 11 of this act, relative to the department of education investigation of gains-based testing.

11 Department of Education; Gains-Based Testing. The commissioner of the department of education shall investigate the feasibility of gains-based testing in meeting the needs of a statewide testing program. The commissioner shall report all findings and recommendations to the house and senate education committees no later than November 1 of each year.

12 Effective Date.

I. Paragraph II of section 10 of this act shall take effect June 30, 2005.

II. The remainder of this act shall take effect July 1, 2003.

**2003-1866s**

### AMENDED ANALYSIS

This bill provides for the collection and reporting of certain school drop-out, suspension, and expulsion data and makes certain changes to the deadlines for school districts and cities to submit certain reports to the department of education. The bill also establishes a statewide education accountability system which includes school performance standards, the creation of an education improvement fund, and the development of a local school improvement plan in each school district.

SENATOR O'HEARN: Thank you Mr. President. I rise to offer a floor amendment. The first thing that this bill does...this amendment does...is add something into the legislation that we inadvertently left out, which is the expulsion and the suspension rate for school districts to start collecting and reporting data on expulsion and its suspension rates, including in-house suspension and partial day suspensions which shall be reported each year. So that has been added back in. What is also added into this amendment: this is that time of the year when we have to be forever vigilant on whatever happens with our legislation over on the other side. I know as a former member of the House, especially when my legislation went into House Finance, we had to make sure that they didn't play with policy. They have played with policy on our accountability bill, SB 107. So with that, I have added the Senate version of SB 107 into HB 139. It is the perfect place to put it in. It aligns the date that...and the report cards

that we have been doing, and the policy that House Finance has been dealing with. They have no business dealing in Education policy. It is a major concern that they can continue to do this. I ask for your support on the amendment to HB 139.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 336-L**, relative to the development and adoption of the school administrative unit budget. Education Committee. Ought to pass with amendment, Vote 2-0. Senator O'Hearn for the committee.

**Senate Education**

**May 21, 2003**

**2003-1743s**

**04/05**

### **Amendment to HB 336-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; School Administrative Units; Budget Adoption Process Amended. Amend RSA 194-C:9 by inserting after paragraph II the following new paragraph:

III. Paragraph I of this section shall not apply to school districts which have adopted the provisions of RSA 194-C:9-a.

2 New Sections; School Administrative Units; Alternative Procedure for Budget Adoption. Amend RSA 194-C by inserting after section 9 the following new sections:

194-C:9-a Alternative Budget Procedure; Method of Adoption.

I.(a) Each school district, within a school administrative unit that is composed of 2 or more town school districts, may vote to adopt the provisions of RSA 194-C:9-b to determine the means for adopting the school administrative unit budget by placing a question on the warrant of their next annual school district meeting. The question shall be voted on in accordance with the ballot and voting procedures in effect in that school district.

(b) The wording of the question shall be: "Shall the voters of the \_\_\_\_\_ school district within school administrative unit number \_\_\_\_\_ adopt the provisions of RSA 194-C:9-b to allow for insertion of the school administrative unit budget as a separate warrant article at annual school district meetings?"

(c) If a majority of the voters in the school districts within the school administrative unit approve the question, then RSA 194-C:9-b shall apply starting with the next annual school district meeting of the school districts within that school administrative unit, and shall continue until rescinded.

II. If, in any year, the question presented to the voters in subparagraph I(b) is not adopted, the question may be resubmitted as part of the warrant of the next annual school district meeting, provided each school district within the school administrative unit complies with the petition procedure set forth in RSA 197:6.

III. In order to rescind the adoption of RSA 194-C:9-b, each school district within the school administrative unit shall comply with the petition procedure set forth in RSA 197:6 and upon such compliance, a question shall be placed on the warrant of the next annual school dis-

trict meeting. The wording of the question shall be: "Shall the voters of the \_\_\_\_\_ school district within school administrative unit number \_\_\_\_\_ rescind the adoption of RSA 194-C:9-b, relative to the alternative school administrative unit budget adoption procedure, and adopt the provisions of RSA 194-C:9 as the method for governing the adoption of the school administrative unit budget?" If a majority of the voters in the school districts within the school administrative unit approve the question, then the provisions of RSA 194-C:9 shall govern the procedure for adopting the school administrative unit budget in such school administrative unit.

IV. For any town which has adopted a charter under RSA 49-D:3, the method of adoption shall be the manner of amending the charter as provided under RSA 49-B.

#### 194-C:9-b Alternative Budget Procedure.

I.(a) For school administrative units composed of 2 or more town school districts, the budget adopted in RSA 194-C:9-a, I may be placed before the voters of each school district of that school administrative unit at the annual school district meeting in a separate warrant article and adopted by majority vote of all the districts. Notwithstanding RSA 32 and RSA 40:13, the budget adopted by the school administrative unit board shall not be amended or changed in any way prior to the vote. If the budget is not adopted, the amount accepted shall be that of the previous year adjusted for continuing contracts. The vote of each town school district on this warrant shall be given by the respective town clerks to the superintendent of the school administrative unit who shall accumulate the total vote for all the towns and announce the result. Wording of the warrant article shall be as follows:

Shall the voters of \_\_\_\_\_ (name of town) \_\_\_\_\_ adopt a school administrative unit budget of \$ \_\_\_\_\_ for the forthcoming fiscal year in which \$ \_\_\_\_\_ is assigned to the school budget of this school district.

This year's adjusted budget of \$ \_\_\_\_\_, with \$ \_\_\_\_\_ assigned to the school budget of this town, will be adopted if the article does not receive the weighted majority vote of the school district voters in this school administrative unit.

(b) School administrative units consisting of one or more cities and one or more towns shall be required to accept the school administrative unit budget adopted by the provisions of paragraph I by the school administrative unit board.

II. This section shall not apply to a city maintaining a school department within its corporate organization, or a school district within a city regardless of whether the city operates the school district or not.

3 Effective Date. This act shall take effect 60 days after its passage.

**2003-1743s**

#### AMENDED ANALYSIS

This bill sets forth the procedure for an alternative method of adopting the school administrative unit budget and requires that the school administrative unit board shall prepare a preliminary budget for approval at a joint meeting of the school districts in the school administrative unit.

SENATOR O'HEARN: Thank you Mr. President. I move HB 336 ought to pass with amendment. This legislation gives multi-town districts the option of voting on the SAU budget. The current system has been a source

of frustration for multi-town districts because they have not been able to voice their opinions on the SAU budget. This will allow for a more responsible town SAU budget and also allow voters to vote on the school budget in its entirety. The Education Committee asks for your support for the motion of ought to pass with amendment. Thank you.

**Amendment adopted.**

### **MOTION TO TABLE**

Senator O'Hearn moved to have **HB 336-L** laid on the table.

**Adopted.**

### **LAI D ON THE TABLE**

**HB 336-L**, relative to the development and adoption of the school administrative unit budget.

**HB 499**, expanding opportunities for teacher certification. Education Committee. Rerefer to committee, Vote 3-0. Senator Larsen for the committee.

SENATOR LARSEN: Thank you Mr. President. I move HB 499 be rereferred. This legislation provides a nationwide teacher certification process by the American Board for Certification of Teacher Excellence. The tests for which this certification is based have not yet been completed. The Department of Education preferred that this legislation not name one company for national teacher certification in statute. The committee would like time for the tests to be completed and tested to determine if this legislation is the proper avenue for expanding teacher certification. The Education Committee asks for your support for the motion of rereferred. Thank you.

**Committee report of rereferred is adopted.**

**HB 528**, establishing a commission to study computer standards used in public schools in New Hampshire. Education Committee. Inexpedient to legislate, Vote 2-0. Senator Johnson for the committee.

### **MOTION TO TABLE**

Senator Johnson moved to have **HB 528** laid on the table.

**Adopted.**

### **LAI D ON THE TABLE**

**HB 528**, establishing a commission to study computer standards used in public schools in New Hampshire.

**HB 568-L**, relative to legal residency for the purpose of public school education. Education Committee. Ought to pass with amendment, Vote 2-0. Senator O'Hearn for the committee.

**Senate Education**

**May 21, 2003**

**2003-1745s**

**04/05**

### **Amendment to HB 568-LOCAL**

Amend the bill by replacing all after the enacting clause with the following:

1 Pupils; Legal Residence of Homeless Children. RSA 193:12, IV is repealed and reenacted to read as follows:

IV. The term "homeless children and youths" means individuals who lack a fixed, regular, and adequate nighttime residence, and shall include the following:

(a) Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement.

(b) Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.

(c) Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings.

(d) Migratory children, as defined in 20 U.S.C. 6399 who qualify as homeless because such children are living in circumstances as described in subparagraphs (a)-(c).

2 Pupils; Legal Residence. RSA 193:12, VI is repealed and reenacted to read as follows:

VI.(a) The commissioner of the department of education, or designee, shall decide residency issues for all pupils, including homeless children and youths, in accordance with this section. If more than one school district is involved in a residency dispute, or the parents who live apart cannot agree on the residence of a minor child, the respective superintendents shall jointly make such decision. In those instances when an agreement cannot be reached, the commissioner of the department of education, or designee, shall make a determination within 14 days of notice of the residency dispute and such determination shall be final. In any case, a written explanation shall be provided to the parties of record and a copy of such explanation shall be kept on file by the department of education. No school district shall deny a pupil attendance or implementation of an existing individual education plan.

(b) A pupil shall remain in attendance in the pupil's school of origin during the pendency of a determination of residency. If a child does not have a school of origin within this state, the child shall be immediately admitted to the school in which enrollment is sought pending determination of the residency dispute, provided such school is in the school district in which the child temporarily resides. For the purpose of this paragraph, "school of origin" means the school the child attended when permanently housed or the school in which the child was last enrolled.

(c) Notwithstanding the provisions of RSA 21-N:11, III any person aggrieved by a determination of the commissioner may appeal such determination to a court of competent jurisdiction.

3 Effective Date. This act shall take effect 60 days after its passage.

SENATOR O'HEARN: Thank you Mr. President. I move HB 568 ought to pass as amended. This legislation clarifies the definition of a homeless child for the purposes of attending school. It allows the commissioner of the Department of Education to decide over the residency of a homeless child for local disputes that cannot be resolved. Along with that decision the commissioner is required to maintain a written record of decisions to be used as a basis for future disputes. This also allows for a homeless child to be entered into a school district immediately. This

legislation tightens statutes pertaining to homeless children in order to provide an education for all of them. The Education Committee asks for your support for the motion of ought to pass as amended. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 210-FN-A**, relative to passenger tramway registration fees and relative to carnival or amusement ride fees. Finance Committee. Ought to pass, Vote 4-0. Senator Odell for the committee.

**SENATOR ODELL:** Thank you Mr. President. I move HB 210 ought to pass. This bill addresses the issues of public safety by strengthening the laws of inspection services for amusement parks, passenger tramways and ski areas. The bill assigns additional personnel from the Department of Safety to inspection duties and provides that all costs incurred that were administered during the passenger tramway safety laws, are covered by the passenger tramway fee. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 591-FN**, allowing a certain former state employee to apply for accidental disability benefits. Finance Committee. Ought to pass, Vote 5-1. Senator Below for the committee.

**SENATOR BELOW:** Thank you Mr. President. This bill simply gives a former employee the opportunity to apply for accidental disability retirement benefit, which she missed due to an unfortunate set of circumstances. If the board of trustees for the retirement fund extends the disability retirement allowance to her, it will have a small impact on the retirement fund. Thank you Mr. President.

**SENATOR BOYCE:** I simply rise to oppose this bill on the grounds that we should not be passing any bill which specifically names an individual, giving them different treatment from all other residents or citizens of this state. Thank you.

**Adopted.**

**Ordered to third reading.**

**HB 460-FN**, relative to property and casualty insurance. Finance Committee. Ought to pass, Vote 5-0. Senator Below for the committee.

**SENATOR BELOW:** Thank you Mr. President. I move HB 460 ought to pass as recommended by the Senate Finance Committee. This bill merely makes some technical changes to the laws relative to property and casualty insurance. The fiscal impacts are minimal if any, and do not effect the general fund. I do move HB 460 ought to pass.

**Adopted.**

**Ordered to third reading.**

**HB 737-FN-A**, relative to the state conservation committee and making an appropriation therefore. Finance Committee. Ought to pass with amendment, Vote 5-1. Senator D'Allesandro for the committee.

**Senate Finance****May 20, 2003****2003-1725s****06/09****Amendment to HB 737-FN-A**

Amend the title of the bill by replacing it with the following:

AN ACT relative to the state conservation committee.

Amend the bill by deleting section 5 and renumbering the original section 6 to read as 5.

**2003-1725s****AMENDED ANALYSIS**

This bill makes a change in the language of the state conservation committee, creates a new unclassified position of executive director of the state conservation committee, and establishes a salary for the position.

SENATOR D'ALLESANDRO: Thank you Mr. President. I move HB 737 ought to pass with amendment. The bill allows for the state Conservation Committee to hire an executive director for the purposes of researching and pursuing federal funds. The committee amendment removes the appropriation from the bill. The executive director's salary will be appropriate by using current general fund money. Please join the Finance Committee by voting ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.****Question is on the adoption of the bill as amended.****Adopted.****Ordered to third reading.**

**HB 738-FN-A-L**, permitting aid to public water systems to be used for forming or improving regional water systems and making an appropriation therefor. Finance Committee. Ought to pass, Vote 5-1. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you Mr. President. I move HB 738 ought to pass. This bill widens the use of existing surface water filtration fluids to include interconnections, when and if money becomes available as the need for filtration declines. This legislation is important because it provides municipalities with an incentive to undertake projects that are seen to benefit New Hampshire's citizens with secure water supplies. Please join the Finance Committee in voting this very important bill ought to pass. Thank you Mr. President.

**Adopted.****Ordered to third reading.**

**HB 303**, relative to life, accident, and health technicals. Insurance Committee. Ought to pass with amendment, Vote 5-0. Senator Prescott for the committee.

**Insurance****May 21, 2003****2003-1737s****01/09****Amendment to HB 303**

Amend the title of the bill by replacing it with the following:

AN ACT relative to life, accident, and health technicals and relative to minimum standards for claim review.



Amend the bill by replacing all after section 3 with the following:

4 Minimum Standards for Claim Review; Accident and Health Insurance. Amend RSA 415-A:4-a, I(c)(2) to read as follows:

(2) A statement of the claimant's or the representative of the claimant's right to access the internal grievance process and the process for obtaining external review. The notification shall also include a written explanation of any claim denial, ~~with the name and credentials of the carrier or other licensed entity medical director, including board status and the state or states where the person is currently licensed,~~ and the relevant clinical rationale used to make the claim denial. ***If the claim denial is based upon a determination that the claim is experimental or investigational or not medically necessary or appropriate, the licensee shall include with the notification the name and credentials of the carrier or other licensed entity, the medical director, including board status and the state or states where the person is currently licensed.*** If the person making the claim denial is not the medical director but a designee, then the credentials, board status, and state or states of current license shall also be provided for that person. Nothing in this section shall be construed to require a carrier or other licensed entity to provide proprietary information protected by third party contracts;

5 Minimum Standards for Claim Review; Accident and Health Insurance. RSA 415-A:4-a, I(c)(5) is repealed and reenacted to read as follows:

(5) If clinical review criteria was relied upon in making the benefit determination, a reference to the specific clinical review criteria, a statement that such clinical review criteria was relied upon in making the claim denial, and a copy of the clinical review criteria shall be provided free of charge to the claimant or the claimant's representative, upon request. If a copy of the clinical review criteria is requested, the clinical review criteria shall be accompanied by the following notice: "The materials provided to you are criteria used by this plan to authorize, modify, or deny care for persons with similar illnesses or conditions. Specific care and treatment may vary depending on individual need and the benefits covered under your contract;" and

6 Minimum Standards for Claim Review; Accident and Health Insurance. Amend RSA 415:4-a, II(a) and (b) to read as follows:

(a) The determination of a claim involving urgent care shall be made as soon as possible, taking into account the medical exigencies, but in no event later than 72 hours after receipt of the claim, unless the claimant or claimant's representative fails to provide sufficient information to determine whether, or to what extent, benefits are covered or payable. In the case of such failure, the licensee shall notify the claimant or claimant's representative within 24 hours of receipt of the claim and shall advise the claimant or claimant's representative of the specific information necessary to determine the claim. ~~[The 72-hour period shall be tolled until such time as the claimant submits the required information.]~~ ***The claimant or the claimant's representative shall be afforded a reasonable amount of time, taking into account the circumstances, but not less than 48 hours, to provide the specified information. Thereafter, notification of the benefit determination shall be made as soon as possible, but in no case later than 48 hours after the earlier of (1) the licensee's receipt of the specified additional information, or (2) the end of the period afforded the claimant or claimant's representative to provide the specified additional information.***

(b) The determination of a claim involving urgent care and relating to the extension of an ongoing course of treatment and involving a question of medical necessity shall be made within 24 hours of receipt of the claim, provided that the claim is made at least 24 hours prior to the expiration of the prescribed period of time or course of treatment. ~~[In the event the claimant or claimant's representative fails to provide sufficient notice or sufficient information, the licensee shall notify the claimant or claimant's representative within 24 hours of the receipt of the claim and shall advise the claimant or claimant's representative of the specific information necessary to determine the claim. If the determination relates to a reduction or termination of coverage for a course of treatment beyond the end of the period of time or number of treatments previously approved, coverage for the services shall not be terminated during the pendency of the determination proceeding.]~~

7 Minimum Standards for Claim Review; Accident and Health Insurance. RSA 415:4-a, II(c) is repealed and reenacted to read as follows:

(c) The determination of all other claims for preservice benefits shall be made within a reasonable time period appropriate to the medical circumstances, but in no event more than 15 days after receipt of the claim. This period may be extended one time by the licensee for up to 15 days; provided, that the licensee both determines that such an extension is necessary due to matters beyond the control of the licensee and notifies the claimant or claimant's representative, prior to the expiration of the initial 15-day period, of the circumstances requiring the extension of time and the date by which the licensee expects to render a decision. If such an extension is necessary due to a failure of the claimant or claimant's representative to provide sufficient information to determine whether, or to what extent, benefits are covered as payable, the notice of extension shall specifically describe the required additional information needed, and the claimant or claimant's representative shall be given at least 45 days from receipt of the notice within which to provide the specified information. Notification of the benefit determination following a request for additional information shall be made as soon as possible, but in no case later than 15 days after the earlier of (1) the licensee's receipt of the specified additional information, or (2) the end of the period afforded the claimant or claimant's representative to provide the specified additional information.

8 Minimum Standards; Licensure of Medical Utilization Review Entities. RSA 420-E:4, IV is repealed and reenacted to read as follows:

IV. Notification of claim benefit determinations shall be made within the following time periods:

(a) The determination of a claim involving urgent care shall be made as soon as possible, taking into account the medical exigencies, but in no event later than 72 hours after receipt of the claim, unless the claimant or claimant's representative fails to provide sufficient information to determine whether, or to what extent, benefits are covered or payable. In the case of such failure, the licensee shall notify the claimant or claimant's representative within 24 hours of receipt of the claim and shall advise the claimant or claimant's representative of the specific information necessary to determine the claim. The claimant or claimant's representative shall be afforded a reasonable amount of time, taking into account the circumstances, but not less than 48 hours, to provide the specified information. Thereafter, notification of the benefit determination shall be made as soon as possible, but in no case later than 48 hours after the earlier of (1) the

licensee's receipt of the specified additional information, or (2) the end of the period afforded the claimant or claimant's representative to provide the specified additional information.

(b) The determination of a claim involving urgent care and relating to the extension of an ongoing course of treatment and involving a question of medical necessity shall be made within 24 hours of receipt of the claim; provided, that the claim is made at least 24 hours prior to the expiration of the prescribed period of time or course of treatment.

(c) The determination of all other claims for preservice benefits shall be made within a reasonable time period appropriate to the medical circumstances, but in no event more than 15 days after receipt of the claim. This period may be extended one time by the licensee for up to 15 days; provided, that the licensee both determines that such an extension is necessary due to matters beyond the control of the licensee and notifies the claimant or claimant's representative, prior to the expiration of the initial 15-day period, of the circumstances requiring the extension of time and the date by which the licensee expects to render a decision. If such an extension is necessary due to a failure of the claimant or claimant's representative to provide sufficient information to determine whether, or to what extent, benefits are covered as payable, the notice of extension shall specifically describe the required additional information needed, and the claimant or claimant's representative shall be given at least 45 days from receipt of the notice within which to provide the specified information. Notification of the benefit determination following a request for additional information shall be made as soon as possible, but in no case later than 15 days after the earlier of (1) the licensee's receipt of the specified additional information, or (2) the end of the period afforded the claimant or claimant's representative to provide the specified additional information.

(d) The determination of a post service claim shall be made within 30 days of the date of filing. In the event the claimant fails to provide sufficient information to determine the claim, the carrier shall notify the claimant within 15 days as to what additional information is required to process the claim and the claimant shall be given at least 45 days to provide the required information. The 30-day period for claim determination shall be tolled until such time as the claimant submits the required information.

9 Minimum Standards; Licensure of Medical Utilization Review Entities. Amend RSA 420-E:4, V(c) to read as follows:

(c) The notification shall include a statement of the claimant's right or the right of the claimant's representative to access the internal grievance process and the process for obtaining external review. The notification shall also include a written explanation of any claim denial~~[, with the name and credentials of the carrier or other licensed entity medical director, including board status and the state or states where the person is currently licensed,]~~ and the relevant clinical rationale used to make the claim denial. ***If the claim denial is based upon a determination that the claim is experimental or investigational or not medically necessary or appropriate, the licensee shall include with the notification the name and credentials of the carrier or other licensed entity, the medical director, including board status and the state or states where the person is currently licensed.*** If the person making the claim denial is not the medical director but a designee, then the credentials, board status, and state or states of current license shall also be provided for

that person. Nothing in this section shall be construed to require a carrier or other licensed entity to provide proprietary information protected by third party contracts.

10 Minimum Standards; Licensure of Medical Utilization Review Entities. RSA 420-E:4, V(f) is repealed and reenacted to read as follows:

(f) If clinical review criteria was relied upon in making the benefit determination, a reference to the specific clinical review criteria, a statement that such clinical review criteria was relied upon in making the claim denial, and a copy of the clinical review criteria shall be provided free of charge to the claimant or claimant's representative, upon request. Any disclosure of clinical review criteria shall be accompanied by the following notice: "The materials provided to you are criteria used by this plan to authorize, modify, or deny care for persons with similar illnesses or conditions. Specific care and treatment may vary depending on individual need and the benefits covered under your contract."

11 Utilization Review. RSA 420-J:6, III is repealed and reenacted to read as follows:

III. Notification of claim denial shall be made within the following time period:

(a) The determination of a claim involving urgent care shall be made as soon as possible, taking into account the medical exigencies, but in no event later than 72 hours after receipt of the claim, unless the claimant or claimant's representative fails to provide sufficient information to determine whether, or to what extent, benefits are covered or payable. In the case of such failure, the licensee shall notify the claimant or claimant's representative within 24 hours of receipt of the claim and shall advise the claimant or claimant's representative of the specific information necessary to determine the claim. The claimant or claimant's representative shall be afforded a reasonable amount of time, taking into account the circumstances, but not less than 48 hours, to provide the specified information. Thereafter, notification of the benefit determination shall be made as soon as possible, but in no case later than 48 hours after the earlier of (1) the licensee's receipt of the specified additional information, or (2) the end of the period afforded the claimant or claimant's representative to provide the specified additional information.

(b) The determination of a claim involving urgent care and relating to the extension of an ongoing course of treatment and involving a question of medical necessity shall be made within 24 hours of receipt of the claim, provided that the claim is made at least 24 hours prior to the expiration of the prescribed period of time or course of treatment.

(c) The determination of all other claims for preservice benefits shall be made within a reasonable time period appropriate to the medical circumstances, but in no event more than 15 days after receipt of the claim. This period may be extended one time by the licensee for up to 15 days, provided that the licensee both determines that such an extension is necessary due to matters beyond the control of the licensee and notifies the claimant or claimant's representative, prior to the expiration of the initial 15-day period, of the circumstances requiring the extension of time and the date by which the licensee expects to render a decision. If such an extension is necessary due to a failure of the claimant or claimant's representative to provide sufficient information to determine whether, or to what extent, benefits are covered as payable, the notice of extension shall specifically describe the required additional information needed, and the claimant or claimant's representative shall be given at least 45 days from receipt of the notice within which to pro-

vide the specified information. Notification of the benefit determination following a request for additional information shall be made as soon as possible, but in no case later than 15 days after the earlier of (1) the licensee's receipt of the specified additional information, or (2) the end of the period afforded the claimant or claimant's representative to provide the specified additional information.

(d) The determination of a post service claim shall be made within 30 days of the date of filing. In the event the claimant fails to provide sufficient information to determine the claim, the carrier shall notify the claimant within 15 days as to what additional information is required to process the claim and the claimant shall be given at least 45 days to provide the required information. The 30-day period for claim determination shall be tolled until such time as the claimant submits the required information.

12 Effective Date.

I. Sections 4-11 shall take effect July 1, 2003.

II. The remainder of this act shall take effect January 1, 2004.

**2003-1737s**

#### AMENDED ANALYSIS

This bill makes certain technical corrections in the laws relating to life, accident, and health insurance.

This bill also clarifies the minimum standards for claim review and denials.

SENATOR PRESCOTT: Thank you Mr. President. I move that HB 303 ought to pass with amendment as was recommended by the Senate Committee on Insurance. This bill makes some technical changes to current regulations involving life, accident, and health insurance. Per the request of the Insurance Department, the committee agreed to make some small changes to the claims process, ensuring that potential claim denials provide full disclosure as to why a claim was denied, as well as the qualifications and contact information of the licensee making that determination. The committee fully supports the bill as amended, and unanimously recommends that this bill ought to pass and hopes that you do the same. Thank you Mr. President.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 507**, relative to certain statutes that set minimum requirements for employee benefit plan procedures pertaining to the filing of benefit claims, notification of benefit determinations, and appeal of adverse benefit determinations. Insurance Committee. Ought to pass, Vote 4-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you Mr. President. I move that HB 507 ought to pass, as was recommended by the Senate Committee on Insurance. This bill is intended to correct some language that had been passed in legislation the previous session. The language pertains to RSA 415-A, in which disability benefits were incorrectly linked together with regulations regarding other requirements for employee benefit plan procedures. This bill would remove the language linking the two separate issues, and put New

Hampshire insurance guidelines in sync with federal guidelines. The committee believes this bill is a good one, and I encourage the full Senate to pass this bill. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 601**, relative to the long-term care insurance act. Insurance Committee. Ought to pass, Vote 5-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you Mr. President. I move that HB 601 ought to pass, as was recommended by the Senate Committee on Insurance. This bill is a request from the Insurance Department, who needs this bill to bring certain New Hampshire insurance guidelines in line with the NAIC model. These changes include consumer protections that significantly enhance the state's ability to regulate the long-term marketplaces, address abuses of post-claim underwriting, and require mandatory offer of a non-forfeiture benefit. The committee unanimously supports this bill, and I encourage the Senate to support passage. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 725**, relative to fraternal benefit societies. Insurance Committee. Ought to pass, Vote 5-0. Senator Cohen for the committee.

SENATOR COHEN: Thank you Mr. President. I move that HB 725 ought to pass, as was recommended by the Senate Committee on Insurance. This bill is intended to bring New Hampshire into line with several practices concerning fraternal benefit societies, which are already accepted in over 40 other states. The intent of this bill is to allow fraternal benefit societies to expand some of their services. The committee supports this bill and gave it a unanimous recommendation of ought to pass. Thank you Mr. President.

**Adopted.**

**Ordered to third reading.**

**HB 420**, relative to state-owned trails and parking lots in the town of Windham. Wildlife and Recreation Committee. Ought to pass with amendment, Vote 4-0. Senator Sapareto for the committee.

**Wildlife and Recreation**

**May 20, 2003**

**2003-1718s**

**03/09**

### **Amendment to HB 420**

Amend the title of the bill by replacing it with the following:

AN ACT relative to the Rockingham recreational trail.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; ATV and Trail Bike Operation on State Lands; Rockingham Recreational Trail. Amend RSA 215-A by inserting after section 43 the following new section:

215-A:44 Rockingham Recreational Trail.

1. No person shall operate an OHRV on any portion of the Rockingham recreational trail west of Route 28 in Derry when it is not snow-covered.

II. No person shall use the parking lot at the Windham depot along the Rockingham recreational trail during the period from one-half hour after sunset to one-half hour before sunrise.

III. Year-round OHRV use shall be permitted on the portion of the Rockingham recreational trail from Route 28 in Derry to Route 125 in Epping.

2 Effective Date. This act shall take effect 60 days after its passage.

**2003-1718s**

### AMENDED ANALYSIS

This bill:

I. Prohibits operation of an OHRV on the Rockingham recreational trail west of Route 28 in Derry when it is not snow-covered.

II. Prohibits using the parking lot at the Windham depot along the Rockingham recreational trail during the period from one-half hour after sunset to one-half hour before sunrise.

III. Permits year-round OHRV use on the portion of the Rockingham recreational trail from Route 28 in Derry to Route 125 in Epping.

SENATOR SAPARETO: Thank you Mr. President. I move HB 420 ought to pass with amendment. This bill is an effort to set a compromise with the town of Windham, OHRV users, and the many other people wishing to recreate on Windham's multi-use trails. I have a special interest in this as I had the chance to view the trails on a dirt bike myself, and inspect it personally. House Bill 420 will prohibit the operation of OHRV's on a four-mile stretch of the Rockingham Recreational Trail west of Route 28 in Derry when the trail is not snow-covered and prohibits the use of the Windham depot parking lot during the period from a half hour after sunset to a half hour before sunrise. While the bill limits trail access for OHRV users on one smaller section of the trail, it expands trail use onto a 14-mile portion of the Rockingham Recreational Trail on the other side of Route 28. This piece runs from Derry to Route 125. For months at a time, Windham's residents spend long days and weekends listening to the harsh and offensive sounds of ATV's racing up and down the trail in their backyards. It's become so bad that residents don't feel that they can use their own yards, let alone use the "multi-use trail". By passing HB 420, we can give back Windham's residents their peace and quiet. I have seen this personally. They really need this. The Wildlife Committee unanimously passed HB 420 out of committee and strongly recommends the bill ought to pass as amended. Thank you.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 295**, relative to information filed with the regional planning commissions. Internal Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Larsen for the committee.

**Internal Affairs**

**May 21, 2003**

**2003-1770s**

**06/09**

### **Amendment to HB 295**

Amend the bill by replacing section 1 with the following:

1 Procedure; Plans to be Submitted to Regional Planning Commission. Amend RSA 36:57, II to read as follows:

II. Within 72 hours of reaching a decision regarding a development of regional impact, the local land use board having jurisdiction shall, by certified mail, furnish the regional planning commission and the affected municipalities with copies of the minutes of the meeting at which the decision was made. ***The local land use board shall, at the same time, submit an initial set of plans to the regional planning commission, the cost of which shall be borne by the applicant.***

2003-1770s

#### AMENDED ANALYSIS

This bill requires a local land use board reviewing a development of regional impact to submit an initial set of plans to the regional planning commission, with the cost to be borne by the applicant.

SENATOR LARSEN: Thank you Mr. President I move HB 295 as ought to pass with amendment. House Bill 295 authorizes a local land use board in reviewing a project to require the applicant, at his or her expense, to submit a set of plans to the regional planning commission. The purpose of this legislation is to keep the regional planning commission informed of projects that may have a regional impact. The Public Affairs Committee recommends this bill with amendment. Thank you for your support.

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 829**, relative to ward boundaries in Manchester and Nashua to be used in state elections. Internal Affairs Committee. Rerefer to committee, Vote 4-0. Senator O'Hearn for the committee.

SENATOR O'HEARN: Thank you Mr. President. I move HB 829 be rereferred to committee. This bill requires that House of Representatives districts in Manchester and Nashua to be conducted in accordance with ward lines established in their city charters. While addressing the Senate district lines for the city of Manchester, this does nothing to address the Senate district lines for the city of Nashua. In that there is no immediate need to act on this legislation, the Public Affairs Committee recommends that this bill be rereferred in order to reach a resolution on the remaining boundary lines. Thank you Mr. President.

**Committee report of rereferred is adopted.**

**HCR 14**, declaring the directives of the judicial branch in the Claremont cases that the legislative and executive branches define an "adequate education," adopt "standards of accountability," and "guarantee adequate funding" of a public education are not binding on the legislative and executive branches. Internal Affairs Committee. Ought to pass, Vote 3-2. Senator Kenney for the committee.

SENATOR KENNEY: Thank you Mr. President. Maybe this bill will wake up the Senate here. I move that HCR 14 ought to pass. This resolution was filed because, as you know, in the early 1990's four supreme court justices severely destroyed our state with their Claremont decision. This resolution disavows the court's role in education funding and is filed because of the need to clarify the separations of power. The court



specifically overstepped their authority in this controversial ruling. The Legislature, in its wisdom, should establish legislation and the judicial branch should rule on the laws we establish – not create laws from the bench. Because the Supreme Court made an error in this ruling, it is the duty and obligation of the Legislature to point out this error by making this statement in HCR 14. Mr. President, I remind my honorable colleagues in the Senate what a concurrent resolution is. It does not have to take the effect of the law. It doesn't have to be signed by the governor. It can be...it is not used to appropriate money, but what a concurrent resolution does is, it puts the legislature on record as supporting or disavowing some aspect of national or state policy. We are going on record here today if we support this, that we are against the Supreme Court ruling of Claremont in the early 1990's. I would encourage you to support the Internal Affairs Committee report. Thank you Mr. President.

SENATOR SAPARETO: Thank you Mr. President. We have been through this about five years now, and here we are again shaking our fists at the sky again, doing nothing more than that. The Supreme Court, since the 1700's has struck down the tax laws over and over again for hundreds of years. That has been part of their role. I challenge...I formally...I have done this for five years...challenge anyone...anyone in this honorable court or in the private sector, to show me any Claremont ruling, since the decision in 1997, December of 1997, where it states that the legislature must enact a specific tax. And, if you could please tell me what that specific tax is and where it says that we have to do that tax...we must do it. I would love to hear it, because I remember being in the House, across the wall here, at the time where we didn't have to do anything and the April deadline in 1999 came and went and nothing...we still didn't have anything. The only reason that we passed a tax at that time was because constituents did not want to stay home to take care of their kids because we didn't do our jobs. That is what this boils down to. This has no constructive effect whatsoever right now for this resolution to be passed. Quite frankly, the Supreme Court stepped up when both this House and the next House failed to do their duties from 1989 on. At least someone had the guts to go ahead and make changes in the law when some towns were getting destroyed in property taxes. For myself and for one of my communities, would thank the Supreme Court for having a severe reduction in their property taxes as a result of this ruling. So I think that this serves to do absolutely nothing but create more animosity between the courts. I am surprised that it wasn't accompanied by an impeachment, since that is what we like to do in retribution to the court. I have had status on this case since 1997 and here we are again, five years later shaking our fist as the court saying "bad court, we disagree with you, but we can't do a darn thing about it." That is what this boils down to right now. I don't know what the purposes of this resolution is to make certain fringe elements of this body or the other body feel good, but this does absolutely nothing with no effect, than maybe make us look good with a few of our constituents. Quite frankly, I don't want those kind of votes.

SENATOR BARNES: Would you believe, Senator Sapareto, that I don't consider myself a fringe element? Would you define fringe element please?

SENATOR SAPARETO: Thank you Senator Barnes. I would define 'fringe element' as approximately 60 members across that hall that felt that there is absolutely no reason for public education whatsoever and told me so at their various meetings in 1998.

SENATOR BARNES: And how many of those members are in this body?

SENATOR SAPARETO: I wouldn't...I wouldn't count anyone in this particular body, Senator Barnes, in deference to you. I have no intention of incurring your integrity.

SENATOR O'HEARN: I rise in opposition to the pending motion on HCR 14. I have to agree with Senator Sapareto. We worked long and hard on trying to develop some kind of answer to education. I think that we all have to at least respect the responsibility that we have taken in answering some of the questions that need to be done in education. It was one year ago that our visiting Senator, and I am not sure if our visiting Senator is still here today, Senator Gordon, had stood up and made the same comment that this was nothing more than spitting in the face of the Supreme Court. An HCR does nothing more than make a statement. It is like children stamping their feet and talking back to their parents and walking away. If you want to do something constructive, if you want to do something that makes the court listen to what we have to say, if you disagree with the court, do something constructive. Write a law that says that the cost of education is \$1. We had that in the House a few years ago. The most constructive thing that you could do is write a CACR removing our responsibility. But this is a waste of time for us to be standing here with all the work that we have done and to call this something that we would support. Not only that, it is...what it does is take quotes from different decisions and puts them together, and it is no longer factual. There are things in here that the courts did not say, such as "pass laws implementing an adequate education based on seven criteria." I know that the directions were. I know, I read that Claremont decision. I know that there is another woman in here that worked very closely with me when we had to define that. That is not what the Claremont decision said. If you are going to write something like this, at least make it factual. This is not factual. I am going to quote from a year ago from Senator Gordon, because I think that it makes a lot of sense. "If you are going to stand up and talk, stand up because you want to accomplish something, not just because you want to show people how smart you are." I ask you to oppose this pending motion. Thank you.

SENATOR SAPARETO: Thank you Mr. President. Actually I am going to repeat my last question. Is there anybody here in this room that can point out to me where in the Claremont rulings, it states specifically, that the legislature must enact a tax and if you could explain to me what that tax is, somewhere in this ruling? I still would love to hear an answer from someone.

SENATOR BARNES: Thank you Mr. President. Senator O'Hearn, do you feel that if we pass this HCR 14 that we might be in danger with the court with what we are going to try to put through for a school program this current session? How do you see that?

SENATOR O'HEARN: That concerns me. Thank you Senator Barnes. That question is a very good question. I think that with what we have been trying to do right along...years ago we passed a definition of what an adequate education is. We passed a way of funding it. This body has redeveloped it and looked at it again and it is on the verge of getting it through to get a better way of funding it. We have passed the accountability in this body, the second time this year. Yes, I think that we are almost complete with our job. Maybe the next thing that we ought to write about when we finish our job, is an HCR and admit to the fact that

we have completed our work, therefore take on the responsibility of what education is and how we are going to look at it. I respect your question and I do think that you have created a very valid point. Thank you.

SENATOR BOYCE: I rise in favor of this HCR. It has been said that this is nothing more than a simple statement. That is true. However, I would like to remind you of another simple statement that was made by a group of people a while back called the Declaration of Independence. It was a resolution and it had no binding effect. It had no legal impact, but it did have the effect of making a statement to the people who wrote it and signed it. What this is intended to do is to point out that we do have three independent branches of government, and that we need to have a separation of those. We need to make sure that we don't have one branch that is overstepping their bounds. The court has, in this ruling, ignored several historical items. The biggest and most damning of their omissions from their acts, comes from the constitutional convention of 1850. Now it was presided over by Franklin Pierce, the state's only President. He and the group of people who formed that convention, had looked at the constitution which was then 65 years old approximately, and found some things that they thought needed to be clarified or rectified in that constitution. One of the things that they had a problem with was that there was nothing in the constitution, as written, that guaranteed a free public education. They were concerned about that. There was much discussion in the journal of the concon, which is available at the Archives, if anyone wants to read it. It is even in a word processing document, which I find very surprising since nobody seems to know why it was ever transcribed to Microsoft Word, but it is. Somebody did this in the modern era to resurrect that document to look at it. In that, they talked about this right to a free public education and that it was missing from the constitution as written. What they did...there were two things that they did to try to rectify this. The resolutions that they passed forward to the people to be acted on by the people, in amending the constitution...their recommendations for changing the constitution were primarily in two places. First, is the section that has the word "cherished", that we have so much trouble with. How the constitution says that we will "cherish the interest of literature and science and public schools and seminaries." They saw that because that was located in Part II of the Constitution, in the form of government, and not in the Bill of Rights, the first part. Because it is not in the first part of the Constitution, it cannot therefore, be one of the rights. Whatever is contained in that language can't be a right. It is the way that the government works if it is in Part II of the Constitution. So their first recommendation was to simply move that language intact, with no change in language, to Part I, therefore, putting it in the Bill of Rights and therefore, creating some type of a right to a public education. The second recommendation that they made was in Part I, the Bill of Rights. That is Part I, Article VI where it talks about the right of the towns and municipalities and cities, "shall forever have the right to contract with their teachers for their maintenance to pay." That says that the towns have a right to hire their own teachers and pay for their own teachers. They saw that as a problem. If they are saying that there is a state right to an education...so their other part of the amendment was to strike the language that included towns. They said, okay, we will let the religious societies hire their own teachers, but we want to make it so that the towns can't. Those are the two changes that they sought to make in the Constitution regarding education in 1850. The people voted down both

of those amendments. Neither of those changes were made to our Constitution; however, the court chose to ignore that historical fact. I think that they are the ones who had this transcribed...had the journal of the concon transcribed so that they could look at it and review it, because they thought maybe there was something in there that they could use to back-up their argument. However, they never mentioned it in their arguments because it doesn't back-up their arguments. It contradicts their arguments. There are several other cases that have been decided by our Supreme Court that contradicts what they did in Claremont. So they ignore those as well. What the court ignored was everything that was detrimental to what they wanted to do. They wanted to tell the legislature how to act. They wanted to legislate from the bench. That is beyond their purview. That is beyond their responsibilities under our Constitution. They acted incorrectly. One of the people that testified before our committee said that when the court has ruled, we have to listen. That was his point of view. Now he may have learned that in law school, he is a lawyer. I didn't learn that where I went to school. I learned that people make mistakes. I learned that *Dred Scott* was a mistake. I learned that there are other mistakes made by the U.S. Supreme Court. I know that there are mistakes made by our Supreme Court. They have been admitted to, later, after the fact. I believe that this was a mistake. Representative Johnson came in and testified. He said that he felt that the courts were wrong. He brought up the *Dred Scott* issue. He has a historical perspective a little different from some of us on that. He also brought up the - several other court rulings that were erroneous and later were changed because they were just completely wrong. The court can be wrong. What we are saying in this is that we believe that the court was wrong and we need to make that statement in order to maintain our independence from the judicial branch. We do not adjudicate, and they do not legislate.

SENATOR SAPARETO: Thank you Mr. President. Senator Boyce, I have a question. Should the public taxpayer fund education?

SENATOR BOYCE: That is not the question. That is not what Claremont was about. Claremont was about striking down a tax system and instructing the legislature to make a change, and giving them a very short timeframe to do it, and setting forth some criteria and stating that they were going to keep control of this case to make sure that we did it right. That was the implication. That is why they still have this case in their venue, because they want to make sure that we do our job the way that they want us to and that is wrong. They are overstepping their bounds.

SENATOR CLEGG: Senator Boyce, is the statewide property tax which funds education, is that paid for by the public?

SENATOR BOYCE: It is paid for by the public yes.

SENATOR CLEGG: Thank you.

SENATOR PETERSON: Thank you Mr. President. I rise to join other colleagues in opposition to the pending motion of ought to pass on HCR 14. It is my personal opinion, in having worked for some years with the aftermath of the Claremont decision that the Claremont decision went too far. It is indeed a prime example of the old adage that "tough laws... that tough cases make bad law." I think that we, in the legislature, have to recognize that there have been years in that...and the body across the wall, where there has been inaction on certain matters that lead to a circumstance where the plaintiff had a case to present to the Supreme

Court that had been strengthened by the fact that the legislature had failed to act, and that indeed they acted on the assessed dollar of property value in one town required to provide an education which was considerably less good, and in another town it could be many, many times the costs in the first town. I was glad to hear the previous speaker bring up the Declaration of Independence because I believe that it is very, very important in our consideration of this resolution before us. The Declaration of Independence speaks of inalienable rights, which are delivered not under government, but under the individual by God. These rights are not subject to a 51 percent vote in either body of the legislature and approval of the government, on a given day, at a given time. They are rights which are basic. And a place that we have to stand up on our hind legs as an individual, and assert those rights versus all the assembled powers of the government, is a place called the courts. Now this resolution before us does not say that we think that the Claremont decision was wrong or errant. What it says is that the rulings of the court shall have no binding effect on the legislative and executive branches. What that means is that we are saying, in a way which I feel is extremely inappropriate, that those constitutional rights that are interpreted by the court can be set aside because we don't like the results of a given decision. I think that is something that we want to take a breath and think about before we do, because what it does really, is change the import in effect, of the basic document which was referenced previously, and which, in my opinion, has served as a light in the world to carry forward a concept called freedom. The HCR that we have before us is one which diminishes the stature, in my view, of the branch which we have been elected to serve. It has no effect, and as a result has the effect of setting up our legislature almost in a position of being like an adolescent stomping their feet, and as one previous speaker had said, shaking their fist at the court. I think that we would be much better served to put on the long pants and grow up, play our role as a co-equal branch and bring forward substantive policies, adjust the position to the court in order to establish a school funding plan that better serves the citizens of the state. I believe that is a much better way for us to be spending our time than arguing over what...at the end of the day, whether we passed this or failed to pass this, will be reported as an empty statement. I encourage my colleagues to vote against the motion of ought to pass on HCR 14. Thank you Mr. President.

SENATOR BELOW: Thank you Mr. President. Thank you for those remarks Senator Peterson. I think they are right on point. I rise in opposition to the HCR. I think that it is both wrong and flies in the face of the separation of powers. Fundamentally what the court did in Claremont I and II, was its job. Its job is to look at how the constitution applies to cases that come before them. It is one of their important jobs. They looked at a case that challenged the constitutionality of the current funding system for education. They interpreted and applied the constitution and found that system of dispersion of local taxes was an unconstitutional way of funding education. It is important to note that our constitution, almost unique within the United States, is extremely strong on the notion of fairness of taxation. This is not a new concept that this court has suddenly discovered. Our court, a different set of justices, but our Supreme Court has expounded on this at length, repeatedly. Just to briefly quote one case in 1880 in *Railroad v. the State*. The court pointed out that, "the unconstitutionality of unequal taxation is too plainly declared by our constitution, and too well settled by repeated decisions made dur-

ing the last fifty-three years to be debatable. A disproportional, unequal assessment, so far as it is disproportional and unequal, is an act, not of taxation, but of confiscation, destitute of that element of equal rights which, under our constitution, is an essential part of the definition of law. "Equality is the corner-stone of every just and wholesome system of taxation. Every departure from their principle, no matter what the pretext may be, shifts upon one class to share of the burden of taxation that belongs to another." They went on and pointed out that "a state tax must be uniform throughout the state, a county tax throughout the county, a town tax throughout the town." Now it is interesting to note that very early in the history of this state, the court found that the taxes to fund education are "in their nature, state taxes, and fall in due proportion upon every town in the state." This was not a new concept. In 1871 the court also observed that the constitution enjoins the duty, in very general and comprehensive term, on magistrates and legislators as one of paramount public importance. Then the legislature, in the early acts referred to, enjoin it upon towns, parishes &c., such corporations being the only organized public bodies then in existence upon which their mandate could be laid, and which could be entrusted with the performance of that duty. They found that we created... "the legislature created school districts and they point out that from the time school districts are first spoken of down to the present time, shows that they are and always have been public corporate bodies, created by the legislature as a means and instrument in carrying out the public duty in reference to public instruction laid upon the legislature by the constitution." Our court was not creating new law, they were looking at case precedent. That the taxes to support public instruction and education are in their nature state taxes, and that this is a duty laid upon the legislature by the constitution. We may disagree with that decision, both from 1829 and 1871, and 1993 and 1997. We may disagree with that, but it is not our job to interpret and apply the constitution in cases....in judicial cases. That was established as a fundamental principal of American **TAPE INAUDIBLE** in *Marberry v Madison* back in the early 1800's. So let's not pass this HCR and diminish the proud position of this body which has defeated it in past years. Thank you Mr. President.

SENATOR BARNES: Thank you Mr. President. I don't think that I am spitting in anybody's face. I am going to vote for this HCR 14. I asked a question earlier that Senator O'Hearn and some of my colleagues think that the court could have a problem with us over here, with what we are trying to do this session. I have a concern on that because I promised the voters when I ran this last time, and I checked my literature and it said that I was going to work very hard with my colleagues to solve this situation, this educational problem and get it out of the way. I heard Senator Sapareto say that we have been playing with this for a long time. He is absolutely right. Back in the 1970's it was the Claremont I lawsuit that isn't noted as Claremont I, but my town of Raymond was involved with it. That was back in the 1970's. So this issue has been around for a long time. I have faith in our court that however I vote here today, and you know how I am going to vote now, they are not going to hold that against me or any of my colleagues that vote for it also. They are smart individuals. They are intelligent individuals and they, too, know that we have to solve this problem. The pettiness that might arise going back and forth, playing badminton with each other, I am not spitting in their face. I am not stomping my feet. I am not clapping my hands and I am an adult. I am 72 years old last time I checked. I wish that I

were a lot younger, but I am not. I am going to vote with it and I do have faith in the court that they are going to be okay with this body when we finish up this session next month. We are going to do something for the people with the education issue and they are not going to hold what we do here today, against us. I have too much faith in those guys in the black robes. Thank you Mr. President.

SENATOR O'HEARN: Thank you Mr. President. Senator Barnes, do you believe then what we are sending as an HCR should at least be factual?

SENATOR BARNES: I am not quite sure. I heard it in caucus and I heard it back here today, and I am not quite sure. I am uncertain.

SENATOR O'HEARN: Thank you.

SENATOR SAPARETO: Thank you Mr. President. Senator Barnes, if this body passed a law that disproportionately by raised taxes in 80 percent of the state, and raise taxes in your district by over 35 percent, would you not hope that the Supreme Court would strike that down?

SENATOR BARNES: I would hope that we would be intelligent enough not to pass something like that Senator. See, the problem that I have with the court is a small problem, for they are not accountable to the people of the state. We are accountable. Fifty thousand people vote for us every two years. Nobody votes for them. We have to have faith in it, and I do have faith in the system. I have faith in those fellows. A thing like that, if we pass that, shame on us. We shouldn't be that stupid to pass something like that Senator.

SENATOR SAPARETO: Thank you Mr. President. Senator would you believe that if this resolution did have the effective force of law to return back to the old system, that taxes in your district could rise so high, in most of our districts, as to change the entire structure of this legislature?

SENATOR BARNES: Senator Sapareto, to answer that question, I know that you are very intelligent on this issue. I have listened to you when you were in the House on this matter over the last five years. If you believe it, that is fine. But do I believe it? No.

SENATOR SAPARETO: Thank you Senator.

SENATOR MARTEL: Thank you Mr. President. I also stand in opposition to HCR 14. Not because I believe that the state Supreme Court was correct in imposing its will on the legislative branch of government or on the people of New Hampshire. But I certainly do believe that we are moving in a direction, the correct direction here in the Senate of working on an education aid plan that would reduce the taxes, especially the statewide property tax, thereby allowing local communities to choose how they would tax their citizens and how they would fund their own education. This is what I believe should happen. I just encourage my fellow Senators to please vote down this HCR 14. Thank you very much Mr. President.

SENATOR GATSAS: Thank you Mr. President. I think that last week, in the debate that we had on the education funding was the Senate Concurrent Resolution. So I look and I say, we had that debate. We took an education funding plan that is in existence and we changed it. The Senate's position was to find a fair and equitable plan. I think that is no different than what the court was looking for. A fair and equitable plan. So I look at my colleagues here and say that we don't need a House Concurrent Resolution. We passed the Senate Concurrent Resolution last week. So I say that I don't believe that the court is going to be mean and

say "we are looking at this new education funding plan in a new light." I think that all along they said "we are looking for something that is fair and equitable." I think that is what this body did last week. We passed an education funding plan that was fair and equitable. I don't believe that we need a concurrent resolution to tell us the things that we did last week because we have already done them. Thank you Mr. President.

SENATOR KENNEY: Senator Barnes...

SENATOR BARNES: A corporal always yields to a major.

SENATOR KENNEY: Thank you Senator Barnes.

SENATOR BARNES: That is military protocol.

SENATOR KENNEY: Thank you. Would you agree that the ruling that came out in Claremont 1997, that three of the state Supreme Court Justices weren't a part of?

SENATOR BARNES: That is my recollection.

SENATOR KENNEY: Would you agree that the state Supreme Court makes decision based off of an independent mind?

SENATOR BARNES: I think that if I sat on the court and that those people sitting on the court, I know a couple of those folks fairly well, I have had hamburgers with a couple of them up the street, occasionally at lunch time. I think that they are bright people, and I think that they do the best that they can do, like us in this Chamber. Like the 24 of us. I think that we all do what we think is right, and we try to do what is right for the majority of people in the state of New Hampshire. I think that they do too. I think that they try very hard to do that.

SENATOR KENNEY: Senator Barnes, would you agree that the state Supreme Court, by us passing the House Concurrent Resolution 14, are not going to see that in any way that it is intended to be, which is our expression, and that there would be no retribution on any further educational plan coming out of the legislature?

SENATOR BARNES: I have all the faith in the world that Judge Brock and his colleagues would absolutely not **TAPE INAUDIBLE**. I agree. I don't think. I know that it won't happen.

SENATOR KENNEY: Thank you.

SENATOR CLEGG: Thank you Mr. President. I will be very brief. I can assure all the members in this body that it wasn't 60 people over in the House from any fringe group that sent this over to us. It takes at least half of those present and voting, so there had to be well over 150 people that voted for this. You talked about sending an education plan over to the House. It had nothing to do with this. We all agreed that there is a method to fund education in this state, and there is one thing that we all know in the back of our minds, and have whispered about it. That is that when the court looks at it, will they say that it is constitutional in accordance with their ruling? What HCR 14 says is, the legislature has the sole right to legislate how we will fund education funding in the state of New Hampshire. Thank you Mr. President.

**Question is on the motion of ought to pass.**

**A roll call was requested by Senator Sapareto.**

**Seconded by Senator Barnes.**



**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Roberge, Clegg, Barnes, Prescott.**

**The following Senators voted No: Below, Green, Odell, Peterson, O'Hearn, Foster, Larsen, Gatsas, Martel, Sapareto, D'Allesandro, Estabrook, Morse, Cohen.**

**Yeas: 9 - Nays: 14**

**Motion failed.**

SENATOR SAPARETO: Mr. President, I would like to move inexpedient to legislate on HCR 14 and I would like to speak to my motion.

Senator Sapareto moved inexpedient to legislate.

### **MOTION TO TABLE**

Senator Boyce moved to have **HCR 14** laid on the table.

SENATOR SAPARETO: Mr. President, may I speak to my motion?

SENATOR EATON (In the Chair): We just had a motion to table.

SENATOR SAPARETO: I actually requested it prior to that motion.

SENATOR EATON (In the Chair): The motion is to table.

### **PARLIAMENTARY INQUIRY**

SENATOR SAPARETO: Parliamentary question?

SENATOR EATON (In the Chair): Parliamentary question.

SENATOR SAPARETO: Thank you Mr. President. Mr. President, if I wanted to move this inexpedient to legislate, would I not vote no on the tabling motion and move inexpedient to legislate?

SENATOR EATON (In the Chair): If you don't wish to table, you'll vote no.

**Question is on the motion to table.**

**A roll call was requested by Senator Sapareto.**

**Seconded by Senator Roberge.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Roberge, Clegg, Barnes, Morse, Prescott.**

**The following Senators voted No: Below, Green, Odell, Peterson, O'Hearn, Foster, Larsen, Gatsas, Martel, Sapareto, D'Allesandro, Estabrook, Cohen.**

**Yeas: 10 - Nays: 13**

**Motion failed.**

**Senator Sapareto moved inexpedient to legislate.**

SENATOR SAPARETO: I believe that the force and effect of this if it were ever in effect, would be to raise property taxes way too high in our communities, and too many of our constituents are paying too high property taxes as it is. I would ask my colleagues to please vote inexpedient to legislate.

SENATOR BARNES: Thank you Mr. President. I think Senator Sapareto, would you believe, in the next couple of weeks, three weeks, you are going to have a real opportunity in this Chamber to vote on what your tax-

payers are going to be paying for taxes and it is not on this piece of legislation, but it is what is going to be in here that Senator Green and his group bring into us? That is when you are going to be able to determine what the people in our towns are going to pay for taxes, not this piece of legislation. Would you believe?

SENATOR SAPARETO: Thank you Senator, and I would believe that, as long as we can get that legislation through, and I am very hopeful that will happen.

**Question is on the motion of inexpedient to legislate.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Sapareto.**

**The following Senators voted Yes: Below, Green, Odell, Peterson, O'Hearn, Foster, Larsen, Gatsas, Martel, Sapareto, D'Allesandro, Estabrook, Morse, Cohen.**

**The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Flanders, Roberge, Clegg, Barnes, Prescott.**

**Yeas: 14 - Nays: 9**

**Committee report of inexpedient to legislate is adopted.**

**HB 105**, relative to sexual assaults committed by corrections officers, probation and parole officers, and juvenile probation and parole officers against individuals under their supervision. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Sapareto for the committee.

**Senate Judiciary**

**May 22, 2003**

**2003-1784s**

**04/09**

### **Amendment to HB 105**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to sexual assaults committed by corrections officers, probation and parole officers, and juvenile probation and parole officers against individuals under their supervision, and making a technical correction.

Amend the bill by replacing all after section 1 with the following:

2 Aggravated Felonious Sexual Assault; Section Amended. Amend RSA 632-A:2, I(n) to read as follows:

(n) When the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit under any of the following circumstances:

(1) When the actor has *direct* supervisory *or disciplinary* authority over the victim by virtue of the victim being incarcerated in a correctional institution, *the secure psychiatric unit*, or juvenile detention facility *where the actor is employed*; or

(2) When *the actor is* a probation or parole officer *or a juvenile probation and parole officer who* has *direct* supervisory *or disciplinary* authority over the victim while the victim is on parole or probation or under juvenile probation.

Consent of the victim under any of the ~~[above]~~ circumstances *set forth* in subparagraph (n) shall not be considered a defense.

3 Felonious Sexual Assault; Gender Neutral. Amend the introductory paragraph of RSA 632-A:3 to read as follows:

A person is guilty of a class B felony if ~~he~~ **such person**:

4 Felonious Sexual Assault; Disciplinary Authority. Amend RSA 632-A:3, IV to read as follows:

IV. Engages in sexual contact with the person when the actor is in a position of authority over the person and uses that authority to coerce the victim to submit under any of the following circumstances:

(a) When the actor has **direct** supervisory **or disciplinary** authority over the victim by virtue of the victim being incarcerated in a correctional institution, **the secure psychiatric unit**, or juvenile detention facility **where the actor is employed**; or

(b) When **the actor** is a probation or parole officer **or a juvenile probation and parole officer who** has **direct** supervisory **or disciplinary** authority over the victim while the victim is on parole or probation or under juvenile probation.

**Consent of the victim under any of the circumstances set forth in paragraph IV shall not be considered a defense.**

5 Sexual Assault. RSA 632-A:4 is repealed and reenacted to read as follows:

632-A:4 Sexual Assault. A person is guilty of a misdemeanor if such person:

I. Subjects another person who is 13 years of age or older to sexual contact under any of the circumstances named in RSA 632-A:2; or

II. Engages in sexual contact or sexual penetration with another person when the actor is in a position of authority over the person under any of the following circumstances:

(a) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or

(b) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

Consent of the victim under any of the circumstances set forth in paragraph II shall not be considered a defense.

6 Technical Correction to 2003, SB 39; Off Highway Recreational Vehicles; Preliminary Breath Tests. Amend RSA 215-A:11-i, I to read as follows:

I. Any law enforcement officer, who has been certified by the police standards and training council according to standards for such certification contained in rules adopted by said council pursuant to RSA 541-A, having reasonable grounds to believe that a person has been driving or operating an OHRV while under the influence of intoxicating liquor or controlled drug, or while the person's alcohol concentration was 0.08 or more, or in the case of a person under the age of 21, 0.02 or more may, without making an arrest, request that such person submit to a preliminary breath test for alcohol concentration to be administered by the officer. The results of any test administered under this section may be introduced into evidence in a court for any relevant purpose. Failure to submit to the test shall not constitute a violation of this chapter. Evidence of failure to submit to a preliminary breath test shall not be admissible in court in any prosecution under this chapter, except for the

purpose of determining whether the officer had probable [course] *cause* to arrest the person. The provisions of this section shall not limit the introduction of any other competent evidence bearing on the question of whether a person charged with violating RSA 215-A:11 was under the influence of intoxicating liquor or any controlled drug. Nothing contained in this section shall be construed to prevent or require a subsequent test pursuant to RSA 215-A:11-a. The law enforcement officer requesting the test shall advise orally the person to be tested that his or her failure to take the test or his or her taking of the test shall not be construed to prevent or require a subsequent test pursuant to RSA 215-A:11-a. The results of the test shall be furnished immediately to the person tested by the law enforcement officer administering the test and in writing, if requested.

7 Contingency. If SB 39 of the 2003 legislative session becomes law, section 6 of this act shall take effect January 1, 2004 at 12:01 a.m. If SB 39 does not become law, section 6 of this act shall not take effect.

8 Effective Date.

I. Section 6 of this act shall take effect as provided in section 7 of this act.

II. Section 7 of this act shall take effect upon its passage.

III. The remainder of this act shall take effect January 1, 2004.

**2003-1784s**

#### AMENDED ANALYSIS

This bill:

I. Prohibits sexual conduct between any person, including juvenile probation and parole officers, in a supervisory or disciplinary capacity and any person being held at the Secure Psychiatric Unit at the state prison in Concord.

II. Eliminates consent as a defense to aggravated felonious sexual assault and felonious sexual assault.

III. Makes a technical correction to 2003, SB 39.

SENATOR SAPARETO: Thank you Mr. President. I move HB 105 ought to pass with amendment. The provisions of HB 105 deal with any time a person has supervisory or disciplinary authority over another individual who is on probation or parole and sexual contact occurs. This legislation is necessary because of an erroneous interpretation by the New Hampshire Supreme Court, surprisingly enough. Clearly, the legislative intent of the earlier enacted statute was to recognize the inherently coercive relationship of someone in a position of authority or power. The provisions of HB 105 place into statute the current administrative rule and is consistent with other professions such as attorneys and physicians who are not allowed to have sexual relationships with patients or clients. The Judiciary Committee asks your support for the bill with amendment. Thank you.

SENATOR PETERSON: Thank you Mr. President. I would add the Senate to vote to approve this committee amendment and then, if it is appropriate, offer a floor amendment for consideration thereafter.

**Amendment adopted.**

Senator Peterson offered a floor amendment.

Sen. Peterson, Dist. 11

**May 29, 2003**  
**2003-1880s**  
**04/09**

### **Floor Amendment to HB 105**

Amend the title of the bill by replacing it with the following:

AN ACT relative to sexual assaults committed by corrections officers, probation and parole officers, and juvenile probation and parole officers against individuals under their supervision, making a technical correction, and permitting the court to prohibit visitation between a parent convicted of sexual abuse or sexual assault against a minor child or stepchild and a sibling or step-sibling of the victim.

Amend the bill by inserting after section 7 the following and renumbering the original section 8 to read as 9:

8 New Paragraph; Support and Custody of Children. Amend RSA 458:17 by inserting after paragraph IV the following new paragraph:

IV-a. Where the court finds that a parent seeking visitation has been convicted of sexual abuse or sexual assault against such parent's minor child or minor stepchild, the court may prohibit visitation between such parent and any sibling or step-sibling of the victim. The court shall make visitation orders that best protect the victim of the abuse and the siblings and step-siblings of such victim. In this paragraph, "sexual abuse" shall mean sexual abuse as defined in RSA 169-C:3, XXVII-a, and "sexual assault" shall mean sexual abuse as provided in RSA 632-A:2, RSA 632-A:3, and RSA 632-A:4.

**2003-1880s**

### **AMENDED ANALYSIS**

This bill:

I. Prohibits sexual conduct between any person, including juvenile probation and parole officers, in a supervisory or disciplinary capacity and any person being held at the Secure Psychiatric Unit at the state prison in Concord.

II. Eliminates consent as a defense to aggravated felonious sexual assault and felonious sexual assault.

III. Allows the court to prohibit visitation between a parent convicted of sexual abuse or sexual assault against a minor child or minor stepchild and any sibling of the victim.

SENATOR PETERSON: Thank you Mr. President. I would like to propose a floor amendment to HB 105 and speak to it as it is being handed out, if I may? Thank you Mr. President. During the deliberations on HB 105, a Representative, a respected long-term Representative from the district which I am privileged to represent, came forward to me with a problem that a constituent of hers had and there was an attempt to draw an amendment to this bill, which was frustrated by some technical considerations. I spoke with the woman last night and decided that I would bring this issue before the Senate in the form of a floor amendment and ask the Senate's consideration and passage of this amendment. The situation, which she is in, may be a situation which others are living under in this state. She was remarried to a man who sexually abused her ten-year-old son. He was convicted of this offense and is in the midst of serving a long-term prison sentence for that offense; however, his natural

son, which remains with the custodial parent, is required, under the court order, to go and have private visitation with this convicted felon at the jail. The impact of this amendment would be to offer protection to siblings and stepchildren in such a family, so that the court, in its discretion, could forbid such visitation in the jail, under circumstances that were deemed to be meritorious in a full court hearing. This would not limit parental rights of anyone except in this specific instance, and only in the case of a full hearing in court. I think that this is appropriate public policy. It should not wait for another year. We should give relief to such a family today, and ask my colleagues to join me in amending the bill to make this possible. Thank you.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 122**, relative to an informed jury. Judiciary Committee. Inexpedient to legislate, Vote 3-2. Senator Peterson for the committee.

**SENATOR PETERSON:** Thank you Mr. President. I move HB 122 as inexpedient to legislate. The provisions of this bill states that a criminal defendant has a right that the court instruct the jury of its inherent right to disregard the law and the facts in controversy and to nullify. This bill, if enacted, would cause very significant problems in the administration of justice as was testified by many witnesses, and could well create a situation where every jury becomes a "mini legislature" on each matter. Juries may well take the instructions required under this bill as meaning that they "should" nullify as opposed to the fact that they may nullify, as is currently the case. Twenty-five bills on this topic have been introduced in legislatures around the country, but not one, not a single one has been adopted. People do not check their common sense when they arrive to serve on a jury. A defense attorney has full rights to bring up this in their closing arguments. Each attorney in a case has the opportunity to provide this instruction and failure to advise a jury on nullification by the court is an appealable situation. The attorney general, each of the ten county attorneys, police chiefs, the New Hampshire Police Standards and Training, the New Hampshire Bar Association, Victims Rights' Group and numerous others all testified in opposition to this legislation. Mr. President, the Judiciary Committee asks your support in killing this legislation. We believe it upsets a delicate balance which defends defendants rights and upholds victims rights to justice as well. Thank you.

**SENATOR BARNES:** Thank you Mr. President. I rise in full support of the committee. I am going to read a letter from one of my police chiefs. I represent 12 towns and I had either letters or phone conversations with seven of them. This is very appropriate. It is what the rest of them are all trying to say. "Dear Jack, I am writing to express my opposition to HB 122. This statute if passed, would require us to prove in every case that the statute was just – in addition to proving that the defendant violated the statute. All criminal offenses are defined by statute and the statutes are enacted through a public process. If a person disagrees with the law, the appropriate recourse is to work to change the law, not to refuse to comply with it. I believe that this statute, if enacted, will place

a burden on law enforcement professionals and prosecutors that will be very difficult to overcome. In conclusion, I urge you to reject this bill.” Yours very truly, Mr. Neal Janvrin, Chief of Police from the wonderful town of Fremont, New Hampshire.

**Committee report of inexpedient to legislate is adopted.**

**HB 177**, excluding stepchildren from the definition of “child” in the context of support orders. Judiciary Committee. Inexpedient to legislate, Vote 3-2. Senator Roberge for the committee.

**MOTION TO TABLE**

Senator Roberge moved to have **HB 177** laid on the table.

**Adopted.**

**LAID ON THE TABLE**

**HB 177**, excluding stepchildren from the definition of “child” in the context of support orders.

**HB 194**, relative to appeals in landlord/tenant actions. Public Affairs Committee. Inexpedient to legislate, Vote 4-1. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you Mr. President. I move that HB 194 be inexpedient to legislate. This bill would change the court of appeal in landlord/tenant cases from the Supreme Court to the Superior Court and limits further appeals to the Supreme Court to issues of law. At this point in time, the committee doesn't feel it necessary to disrupt the system that is currently in place, as there is not enough evidence to suggest that directing landlord/tenant appeals to the Superior Court will have significant benefits to the public. There was however, a great deal of testimony in opposition, suggesting that adding an extra layer to the appeal process, will place more stress on the already backlogged Superior Court system. House Bill 194 will also complicate and lengthen the landlord/tenant cases and prevent landlords from evicting disruptive tenants and collecting past due rent in a timely manner. The Public Affairs Committee recommends a motion of inexpedient to legislate and asks for your support. Thank you.

**Committee report of inexpedient to legislate is adopted.**

**HB 259**, relative to the regulation of gift certificates under the consumer protection act. Public Affairs Committee. Ought to pass, Vote 5-0. Senator Green for the committee.

SENATOR GREEN: Thank you Mr. President. I move that HB 259 ought to pass. This bill defines and regulates the use of gift certificates under the Consumer Protection Act. Under current law, it is illegal for any gift certificate to have an expiration date unless it has been donated. House Bill 259 takes New Hampshire one step further and prohibits administrative fees or service charges if they reduce the total amount of a gift certificate. In essence, we are protecting the consumer from deceptive business practices and guarantee that when they pay for a gift certificate in full, the gift will retain its value for life. This issue has become increasingly problematic with the invention of gift cards. Since the mid-1990's gift cards have eclipsed paper gift certificates at major stores and restaurants. While most gift cards disclose their fees and charges on the back of the card, they are often confusing and rarely explained at the time of purchase. Consequently, the consumer is unaware that they could lose partial value of their gift or have it expire altogether. While

the industry argues these service fees cover the cost of processing the cards, I say these losses are the cost of doing business. The bottom line is that it's unfair to let a business not completely honor their business deals through expiration dates or diminished values on gift certificates and gift cards. For that reason, the Public Affairs Committee recommends HB 259 ought to pass. Thank you.

Senator Morse offered a floor amendment.

Sen. Morse, Dist. 22

**May 29, 2003**

**2003-1876s**

**06/09**

### **Floor Amendment to HB 259**

Amend the title of the bill by replacing it with the following:

**AN ACT** relative to the regulation of gift certificates under the consumer protection act and establishing a study committee relative to the regulation of gift certificates.

Amend the bill by replacing all after section 2 with the following:

3 Committee Established. There is established a committee to study the regulation of gift certificates under the consumer protection act.

4 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Two members of the senate, appointed by the president of the senate.

(b) Two members of the house of representatives, appointed by the speaker of the house of representatives.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

5 Duties. The committee shall study the regulation of gift certificates under the consumer protection act. The committee shall examine application of the statute to gift cards and shall consider the possibility of prohibiting dormancy fees and similar administrative charges.

6 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

7 Report. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2004.

8 Effective Date.

I. Sections 1 and 2 of this act shall take effect January 1, 2004.

II. The remainder of this act shall take effect upon its passage.

**2003-1876s**

### **AMENDED ANALYSIS**

This bill defines and regulates the use of gift certificates under the consumer protection act.

This bill also establishes a study committee relative to the regulation of gift certificates.

**SENATOR MORSE:** Thank you Mr. President, I rise to offer a floor amendment. Mr. President, I agree with Senator Green. I think that business has done a terrible job promoting these. Last night, I am not sure



that my seven-year-old daughter appreciated that dad was at a restaurant asking the question while we were eating dinner, about this, the gift card. I can't read it without my glasses. I can't read that it says that they are going to charge two dollars a month after 24 months. So I will agree with you that business has done a terrible job with gift cards, and we need to put the legislation that we are proposing today, forward. But I also think that we have to advance ourselves in this state, and I am offering a floor amendment that will put a study committee together that will basically look at issues that come up with these gift cards. One issue that I believe a gentleman that is president of 14 Mr. Mikes presented, that we are not looking at right now as we pass legislation is, if you go into Massachusetts and buy a gift card, and you give it to someone in New Hampshire as a gift, Massachusetts currently allows that you can deduct the two dollars. We haven't addressed that in this bill. I think that there are a number of other issues that we haven't addressed, and I think that the concern comes out of small business in my opinion. This may offer a safety issue to small businesses when it comes to gift cards. When it comes to duplicating gift certificates. I don't know the answers to that. What I am asking you to do today, is basically pass the bill that we originally looked at in committee, but also add a study committee to it. I ask for your support for that. Thank you.

SENATOR GREEN: Thank you Mr. President. I rise in support of the amendment and ask that the Senate vote to support this amendment.

SENATOR PETERSON: Thank you Mr. President. I would just like to thank Senator Morse for his leadership on this. The situation which he has referenced is one which a constituent of mine is experiencing. There are a number of businesses in the southern tier that operate both in Massachusetts and New Hampshire. We would like to see that they be able to take advantage of national programs, and national gasoline dealers or something and be able to offer those incentives on both sides of the border. I think that there are a number of issues here to be investigated in a study committee and I wish to support the floor amendment. Thank you.

SENATOR BARNES: Thank you Mr. President. Does that mean that you are volunteering for that committee?

SENATOR PETERSON: Yes it does Senator Barnes, thank you.

SENATOR EATON (In the Chair): We all thank you.

SENATOR BARNES: Somebody took a note of that?

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**HB 311**, repealing the obligation to provide persons applying for a marriage license with a list of family planning services and with brochures on fetal alcohol syndrome and the human immunodeficiency virus. Public Affairs Committee. Ought to pass, Vote 4-1. Senator Barnes for the committee.

SENATOR BARNES: Thank you Mr. President. I move that HB 311 ought to pass. This bill repeals a 1973 law that mandates marriage license recipients receive lists on family planning services and brochures on fetal alcohol syndrome and HIV from their town clerks. I

am going to end with that and ask for your support. If anybody has any questions, I have a couple of things that I would like to add to that, but not here during the blurb.

SENATOR BELOW: Thank you. I rise in opposition to the committee report. Here is the little packet that you can get when you apply for a marriage license. There are three simple brochures in here. One that just has a map and a list with phone numbers, of agencies that provide family planning services. One's a little brochure about HIV and the transmission of it, and one's about Fetal Alcohol Syndrome, which is something that people perhaps aren't quite familiar with, but it has a very profound impact on a fetus that has a mom who is drinking and it really is a very difficult situation to deal with once a child is born with that syndrome. I would submit that if just providing this simple information which people can just discard, if they are not interested in these, they can just throw them in the trash. I would submit that if just one case or transmission of HIV is avoided, or one unintended, unwanted pregnancy, or one birth of a child with Fetal Alcohol Syndrome is avoided, it is well worth it, and I cannot see why we are taking a step backwards in public health. Thank you.

SENATOR BARNES: Thank you Mr. President. I guess these are going to be would you believe, Senator Below. Number one: I went to my town clerk, would you believe, to ask about this? People cannot take these pamphlets and discard them if they don't want to read them. If you look at this marriage certificate, they have to sign that certificate and the clerk has to sit there and watch these people read this material. The people that are applying for the license must sign that they have read and understand the materials, so they cannot throw it away? Number two: Would you believe that we had this deal in here on how, to get an abortion, but we have no brochure in here on telling folks how instead of abortions, they could go for adoption? Now that is kind of strange that the other side of the issue doesn't have a say. Would you believe that in most town halls, information on this alcoholic deal is hanging on the bulletin boards? Would you also believe that there are 230 some odd town clerks, and that some of them might be offended by some of this, and discard it and they might not even be following the laws because of religious beliefs or whatever? Would you believe that I don't think that it is appropriate to have this material? I don't think that it is necessary. Would you believe that in 1954 when I was married, and I didn't get this material, and in my days, gonorrhea and syphilis were the big deals, it wasn't alcohol and it wasn't AIDS. They didn't know what that was. They knew what alcohol was, but they didn't know what AIDS was. But my mother and father taught to me about syphilis and gonorrhea. My first sergeant in the Army also taught me all about those diseases. I didn't need a pamphlet paid for by taxpayers money to tell me that it is not good to have syphilis and gonorrhea and not to transmit it to your partner.

SENATOR BELOW: I guess I believe number four, number five and number six, but I don't believe number one, two or three or number seven.

SENATOR BARNES: That is very well said.

SENATOR BELOW: Thank you. The first one was that they had to have read it. There is an acknowledgement that they have received and discussed the brochure. I don't believe that there is anything here that says that they can't take it and throw it away after they have signed that they have received it. I think that another point was that **TAPE CHANGE**

this information on Fetal Alcohol Syndrome hanging in most city halls. I don't particularly believe that or know that to be true. I know that the places that I have been to, I have not seen that. Another point that you made was something about abortion, and I don't see anything in here that mentions the word "abortion." As we discussed last week, it is common practice at family planning centers, a few of whom provide counseling with regard to abortions, that they make all options available, make note of that. If the problem is that you don't think that other alternatives are listed in that regard, we can certainly add it into the law, but I also don't see that there is anything in here that talks about other sexually transmitted diseases and maybe that is a good idea, but maybe not, but I think that what is in here is reasonable.

SENATOR BARNES: Thank you Mr. President. Would you believe that you have the same folder that I had, maybe you would turn to this brochure that I have...this reddish looking piece of information. I am looking at the bullets here. One, two, three, four. The fourth bullet down. "Birth control methods and education on the correct usage." The next one: "Pregnancy testing and counseling." When you hear "family planning", what does that say to you? What...doesn't that suggest that it might be something to do with abortion? It does in my English language.

SENATOR BELOW: I think that some of these agencies are involved with that, but many others, and primarily what they do is precisely that, birth control methods and education, pregnancy testing and counseling about all of the alternatives. If you are not interested in that, you can ignore it. It just simply provides the information on where to go to get that information if you want it. In this day and age, I think that it is appropriate that people have that information.

SENATOR COHEN: Thank you Mr. President. I am pretty amazed, I must say, at the discussion on this issue. It seems to me...we disagree on a lot of things, but I would hope that we could all agree, that we are elected by the people of New Hampshire. Our job is to serve the public good. Do we not all agree that that is what we are here for? Providing information to people. Simply providing information so that they can make their own personal choices. How can that be anything but a good thing? Family planning, alcohol, the effects of alcohol on children. What is wrong with making people...giving people the option of becoming aware about that? It causes severe damage to our children. When people are getting married, shouldn't...isn't this an appropriate time that people may be interested in such issues as family planning, they can choose however they like? The prevention of HIV, and the effects of alcohol consumption on fetuses? Why not provide that information? It seems to me that having an enforced head in the sand approach, accomplishes nothing, and can only send us backwards. There is nothing, Senator Barnes, from prohibiting us from adding information, which may be passed out, this is just "the information is here." Having education is positive. Giving people awareness of resources, especially about such important issues as the children that we bring into this world, especially with regard to the effects of alcohol. People didn't know 40, 50, 60 years ago, of the effects of alcohol on fetal development, now we do. A lot of people aren't aware of that. Wouldn't it be good to get that information into people's hands? Thank you very much.

SENATOR BARNES: Senator Cohen, I'll bet you that your mom and dad taught you about these things. I'll bet that you didn't have to have something handed to you when you went to get married. I'll bet that you knew

all about sexually transmitted diseases. I'll bet that you knew about your wife drinking and smoking wasn't good. I'll bet you your parents, and I'll bet you that her parents gave her this information.

SENATOR COHEN: If you are asking if that was the case, actually it was not. Yes, I knew about most of these things, but I did not know for example, the depth of how detrimental alcohol consumption can be. I didn't know how serious it was. This would have been good information to pass out. I can throw it away. Anybody can get this and throw it away if they chose. It is just putting options, awareness and resources in peoples hands. How can that be anything but a positive step?

SENATOR BARNES: Your answer is that your parents taught you about these things before you got married?

SENATOR COHEN: Actually, no.

SENATOR BARNES: Thank you.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise to speak against the piece of legislation. I have had the pleasure of being married to the same woman for 42 years. It has been certainly one of the best things that has ever happened to me. So let me just say that I am 100 percent for marriage and sustaining it. I would suggest that another brochure be added to this, "how to keep a marriage together", because it seems to me, that fifty percent of the people that get married, get divorced. So if we are talking about the right things to do, we should be adding more to this list rather than having this list withdrawn and thrown away. Let's talk about the basic fundamentals here. HIV wasn't around when most of us got married. The President of the United States thought it was so important that he talked about giving \$32 billion to deal with the disease. He hasn't come up with the money yet, but he did think of it enough in the State of the Union message to say "people should have information." It is vitally important that people have information. We spend billions of dollars on education. Billions of dollars. We think it is a worthwhile expenditure. We want everybody reading at the proper level by the time that they are in the third grade. So certainly reading this material, if indeed you want to read it, makes a lot of sense. With regard to the Fetal Alcohol Syndrome: We know alcoholism is a very serious problem in our state and in our nation. Letting people know something about it makes sense. It makes a great deal of sense. With regard to Planned Parenthood: I believe that there should be something about adoption. I know that when we went to adopt children, it took ages to find out where to go and how to work in order to adopt children. That was a full-time job for my wife and I. It took us four years before we arrived at the right place, at the right time and had the synergy to put things together. So that should be in here. It is an information piece. But why, in a world where we believe education is so important, do we want to deny people an opportunity to go through the educational process? The comment was made about a town clerk who, because of their religious beliefs, doesn't think these should be turned out, shouldn't be passed out. Well that person shouldn't be a town clerk. Because if your religious beliefs supercede your ability to follow the law, then you should resign from the job and go out on a crusade, but following the law is what we get elected to do. There isn't anything that says we have to like every law that is enacted. But because we live in a democratic society, we obey the law. That is what takes us and puts us a cut above the unorganized, non-

law abiding world. We obey the law. We respect the law. I think this is something that is very important. It has been in place since the 1970's, we should update it rather than repeal it. Thank you Mr. President.

SENATOR LARSEN: Thank you Mr. President. I sat on this committee and heard this bill. I find it at this time in our development, ironic that we, knowing the problems that HIV and Fetal Alcohol Syndrome cause, that we are now not going to use what is a rare moment, when perhaps a young couple crosses the doors of the city hall, to pick up some materials to be married and to use that opportunity to bring some public health information to that young couple. As I said in committee, I think that there are times that they might throw them away, but they might also, as they are driving home, read them to each other. There is information in the Fetal Alcohol Syndrome handout that says information that I'll bet most of us don't know. Do you know how many ounces of hard liquor it takes and how fast that passes into your blood stream? Do you know that within ten minutes of having a drink, the alcohol that you have consumed goes through the placenta and is circulating into the babies blood? Those kinds of things you don't know if you haven't taken the time to look at this. There is information here that encourages people what to do if they think that they have a problem drinking and where to go. A lot of people don't know what to do if that is the case. The other question that I had is having just been to the Kids Count, we know that New Hampshire has a very high rate, not only of alcohol consumption, but also a high rate of teen smoking. I sat on a committee and have sat on a committee for many years, Perinatal Alcohol and Drug Abuse and one of the concerns has been that we have a high rate of teens smoking. Teens who become pregnant continue to smoke. Should we not in fact be encouraging giving up smoking when you are pregnant at the same time? To say that we are now not only going to not work on the tobacco concerns and their effect on a fetus, but we are not going to tell about Fetal Alcohol Syndrome is wrong. The same with HIV. How many of us know some of the materials here about HIV and how you would know how people get it and how you can prevent it? What the goal here with this bill is in fact, to work on removing the language that talks about offering services to young couples who are looking for information. At the locations that are mentioned in the health services available across the state, they offer services like physical checkups, breast exams, pap smears, general health counseling, birth control methods, pregnancy testing, treatments for sexually transmitted diseases, HIV and AIDS education and testing. If you don't know where to go for information, this is a simple guide. It does not urge people, it has no mention of abortion. It does not urge people that they have to go to this. It simply is information. I think that we are moving backwards. We ought to be more and more concerned about getting public health information to people when the opportunity arises, not putting this behind closed doors and refusing to give people information that could be useful to the health of their babies.

SENATOR SAPARETO: Thank you Mr. President. I guess this is a question for anyone on the committee. I was just wondering, what is the cost of the program and actually, where does the money come from?

SENATOR LARSEN: The program, the handouts, some of them are paid for, I understood, by the Center for Disease Control and the other is the Department of Health and Human Services prints these very inexpensive pieces of paper. So they are prepared through CDC and the Department of Health and Human Services.

SENATOR SAPARETO: How many were handed out last year?

SENATOR LARSEN: As many as marriage licenses were offered. This pamphlet on *Health Information and Family Planning Programs Helping You To Plan Your Future* is distributed...printed with funds by the U.S. Department of Health and Human Services and the New Hampshire Office of Health Management, so there is a federal share of this one and the state appears to pay for these eight-and-a-half by eleven's.

SENATOR SAPARETO: Thank you very much.

SENATOR ESTABROOK: Thank you. Senator Larsen, when you are talking about the usefulness of these materials, I wondered if it would be your view that this program is really a measure that would help us to lessen the demand for abortion? That by providing people this information on family planning services, we are indeed working towards lessening that demand.

SENATOR LARSEN: I would agree with you that places like the Capitol Region Family Health Center are mostly aimed at helping people raise healthy children and welcome children into the world rather than having any other goal than to improve healthy outcomes of pregnancies.

SENATOR ESTABROOK: Thank you.

**Recess.**

**Out of recess.**

### **MOTION TO TABLE**

Senator Prescott moved to have **HB 311** laid on the table.

**Adopted.**

### **LAID ON THE TABLE**

**HB 311**, repealing the obligation to provide persons applying for a marriage license with a list of family planning services and with brochures on fetal alcohol syndrome and the human immunodeficiency virus.

**HB 431**, eliminating application of the rule against perpetuities to instruments that contain safeguards relative to the continued alienability of property. Public Affairs Committee. Ought to pass, Vote 4-1. Senator Barnes for the committee.

SENATOR BARNES: Thank you Mr. President. I certainly hope that this one doesn't take as long as the last one. Just say yes and we are all set. I move HB 431 ought to pass. This bill provides that the common law rule against perpetuities shall not apply to any disposition of property or interest if the instrument that creates the property interest contains an express provision exempting it from the rule and if that instrument contains a provision that allows for the alienability of the property. The committee voted 4-1 ought to pass and would appreciate your support. Thank you.

SENATOR LARSEN: I just have to rise quickly to point out several things. I am in fact, going to vote against this bill. We heard in committee...actually this bill has come up numerous sessions. I have one dating back as far as 1993. Each time the legislature has had it in Judiciary and that review committee has voted that it is inexpedient to legislate. This time it came to Public Affairs where we were dealing with perhaps one of the more technical aspects of legal...dealing with the rule against perpetuities. Oftentimes you can ask a lawyer what the rule of perpetuities is and they have trouble doing it, even though it does hap-

pen to come up, I believe in their first year of law school. The problem that I had with it is that one of the few things that I know about, the rule of perpetuities is that it is always described as the long dead arm of an ancestor reaching out from the grave and controlling what is the estate for many years into the future. The rule of perpetuities states that your estate, your ability to plan for your estate ends after 21 years. This allows for your long arm, even after death, to proceed and manage your children and your ancestors far into the future, creating dynasty trusts. Because it is such a technical aspect of the law, there are still concerns on its effect within New Hampshire. I understand that we want to be competitive with states such as Maryland and Delaware, in attracting great wealth to our state, but I also believe that this may have an effect on estate planning which some of us perhaps do not intend. So I was the one vote against it. I would urge the Senate to think carefully as you do this, because I believe that it is in effect, allowing that long arm to rise up from the grave and control the estate far into the future, and what affect will that have on our state. Thank you.

**SENATOR BARNES:** This antiquated common law rule, against **TAPE CHANGE** people to set up trusts that have the potential to last forever not just for 21 years after the first living descendent of the trust creator. Trusts have become a very popular way to retain a legacy and expand a family fortune for generations for come. Many people also use charitable trusts to control the use of their assets after they die. House Bill 431 will provide individuals with additional options when planning out their families trust. Thank you.

**SENATOR SAPARETO:** Thank you Mr. President. Mr. President, I rise in support of this bill. I was also a co-sponsor on this bill. This bill is a very important tool in financial planning. You know, right now as it is, it doesn't make any sense to establish these trusts in this state. It doesn't make any sense to do that. You know with clients who have larger amounts of wealth that want to bypass their estate tax laws, or any of the laws, will simply establish a trust in Massachusetts or Maine or someplace else that does have most of these things updated and in effect. So I think that it is quite correct that this is actually costing our state quite a bit of money. As this money is distributed to the beneficiaries of these trusts, they're collecting...they're earning money. It is bringing dollars in. Right now as it is, the estate attorneys that my firm uses to establish these things does not establish any of these in New Hampshire, and these are millions and millions of dollars. It doesn't make sense. We need to be brought up to speed as far as where the other states are in enacting this. Part of the problem is that your generations down the line, you have so many potential beneficiaries of these that it doesn't make sense to do it here under our current statute. It is very antiquated. This is a bill that is long, long overdue. I hope that you will support the committee report.

**Adopted.**

**Ordered to third reading.**

**HB 753**, establishing the fourth Monday in April as General John Stark Day. Public Affairs Committee. Ought to pass, Vote 5-0. Senator Barnes for the committee.

**SENATOR BARNES:** Thank you Mr. President. Now this is a real quick one. Just say yes. I move HB 753 ought to pass. This bill will allow the Governor to officially proclaim the fourth Monday in April as General

John Stark day in New Hampshire. This does not give any additional holidays or any time off, this is just the day that it's General Stark's Day. To refresh your memory, because some of you might not have remembered this, General Stark was born in Nutfield, now Londonderry, (Senator Clegg's district) in 1728 but moved to Manchester (Senator D'Allesandro's district). I am trying to get all the votes that I can get here. He passed through other peoples districts to get to these places, remember that. John Stark was a well-respected farmer, trapper, sawmill operator, and rugged frontiersman. Stark went on to become a Rogers' Ranger in the French and Indian War and a Revolutionary War hero serving at Bunker Hill and the Battle of Bennington where he lead New Hampshire troops to victory against the British Army. Perhaps what he is most well known for is on our license plate, "Live Free or Die". Let's give the General respect and have that fourth Monday in April named after him. I am sure that his descendents and I am sure if he were here, he would be very pleased to have us vote for this. The General is over there at his horse. My God, the General is here with us, watching what we are going to do. Dare you vote against him with that horse he has in his hand. Thank you Mr. President.

SENATOR EATON (In the Chair): Thank you Senator Barnes, and thank you for serving with General Stark.

SENATOR SAPARETO: Thank you Mr. President. I would just like to refresh my esteemed colleagues memories here that General John Stark was actually born about a mile from my house – what is now Derry, not Londonderry. At the time it was Londonderry, however, in the 18<sup>th</sup> century, it became the town of Derry. I guess that I would even put that as a question. Would you believe, Senator?

SENATOR BARNES: I think that is fantastic. Now we have three Senators, at least, on record as supporting this bill.

SENATOR SAPARETO: Absolutely.

**Adopted.**

**Ordered to third reading.**

SENATOR PRESCOTT: Mr. President, would it be all right if I remove HB 281 from the table at this time?

SENATOR EATON (In the Chair): Senator Prescott, we have just three more bills to go, may I ask indulgence to hold off on that and I will get back to you first?

SENATOR PRESCOTT: Certainly.

SENATOR EATON (In the Chair): Thank you.

**HB 709-FN**, relative to nursing homes in receivership. Public Institutions, Health and Human Services Committee. Ought to pass, Vote 2-0. Senator Boyce for the committee.

SENATOR BOYCE: Yes, I move that we ought to pass HB 709. This bill allows the Department of Health and Human Services to appoint a receiver to operate a nursing home if a nursing home should be without a licensed operator. If the operator dies or the license is removed because of some misdeed or something or whatever, the Health and Human Services could appoint an approved receiver and operate the home. The point of this is to prevent primarily elderly folks who are in nursing homes, from having to be moved out of their nursing homes simply because the owner of the facility died. Under state law right now, it is



unclear how they can keep them in that nursing home because there is no licensed operator. This allows that to happen. There was discussion in the committee about what happens after this 90 day period of receivership would be ending? The people from the nursing homes and the people from Health and Human Services, along with the ombudsman office, got together and worked on this and we have a floor amendment which we will offer in a moment. It was a very interesting hearing that day. It was the day that the power went out and we exced this out quickly in order to not have our secretary have to take copious notes of what we were doing. We voted it out of committee, ought to pass rather than wait for the amendment and try to do it that day. That is why we are doing it as a floor amendment. They are in an agreement. The floor amendment will make it just a little bit better. I ask that you pass it as is so that we can take up the amendment.

Senator Martel offered a floor amendment.

Sen. Martel, Dist. 18

**May 28, 2003**

**2003-1849s**

**01/09**

### **Floor Amendment to HB 709-FN**

Amend the title of the bill by replacing it with the following:

AN ACT relative to nursing homes and other residential care facilities in receivership.

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; Nursing Homes; Receivership. Amend RSA by inserting after chapter 151-E the following new chapter:

#### **CHAPTER 151-F**

##### **RECEIVERSHIP OF NURSING HOMES AND OTHER RESIDENTIAL CARE FACILITIES**

151-F:1 Definitions. In this chapter:

I. "Commissioner" means the commissioner of the department of health and human services.

II. "Department" means the department of health and human services.

III. "Emergency" means a situation or condition which presents imminent danger of death or serious physical harm to residents, including but not limited to, imminent or actual abandonment of an occupied facility, and excluding a crisis due solely to a natural disaster beyond the control of the licensee where the licensee is taking appropriate remedial steps. An organized labor activity conducted for union recognition or as a tactic in contract negotiations shall not, of itself, constitute an emergency. Voluntary withdrawal from participation as a provider of services under the medicaid program, established under Title XIX of the Social Security Act, or under the Medicare program established under Title XVIII of the Social Security Act where such withdrawal was not occasioned by the denial of certification to the facility, shall not, of itself, constitute an "emergency."

IV. "Facility" means any nursing home or other residential care facility subject to licensing under RSA 151:2.

151-F:2 Appointment of Receiver. The probate court, upon petition of the department, as hereinafter provided, may appoint a receiver for any facility; provided, that the court finds that lives, health, safety or wel-

fare of the residents cannot be adequately assured without the appointment of a receiver and either that an emergency exists, or that the facility is operating without a valid license.

151-F:3 Action to Appoint Receiver; Hearing; Purpose of Receivership.

I. The department may petition the probate court for the appointment of a receiver, after notification to the attorney general, requesting the appointment of a receiver to operate a facility. Before the department files such a petition, the commissioner shall consult with a facility administrator. The administrator shall have appropriate experience as a nursing home or other residential care facility administrator and shall have no financial ties or affiliation with the facility that is the subject of the proposed receivership. When the petition concerns a nursing home, the administrator shall be chosen from a list provided by the New Hampshire Health Care Association. The administrator may submit his or her recommendations concerning the facility proposed for receivership within 2 business days after receiving all relevant information from the commissioner. The consulting administrator shall be immune from any damages action arising out of these recommendations. After the 2-day period, the department, in its sole discretion may file a petition in the probate court. Nothing in this chapter shall be construed as abrogating or superseding any common law or statutory right of any person to bring an action requesting appointment of a receiver to operate a facility.

II. The court shall immediately issue an order of notice and set the matter for hearing not less than 5 days and not more than 14 days after filing of the action. The petition and notice of the hearing shall be served on both the licensee and the owner of the real estate where the facility is located not less than 3 days before the date of the hearing, unless a different period is specified by the court. A receiver may be appointed immediately, on an ex parte basis, if the court determines by verified complaint or by affidavit that there are grounds for the appointment of a receiver and that immediate appointment is necessary to prevent immediate, irreparable harm to the residents, and that there is no adequate alternative remedy. The licensee shall be given prior notice of the ex parte hearing unless such notice is impossible. If a receiver is appointed on an ex parte basis, service shall be made on the licensee and owner and a hearing held within 5 days of the date the order was issued.

III. The court shall appoint as a receiver any person appearing on a list of names maintained by the commissioner. The list for purposes of receiverships involving nursing homes shall be established by the New Hampshire Health Care Association and provided to the commissioner. If those persons are unwilling or unable to serve, the commissioner may provide other appropriate candidates' names to the court. Persons appearing on any such list shall have experience in the delivery of health care services, and, if feasible, shall have experience with the operation of long-term care facilities. A receiver shall not have a financial interest in or any affiliation with the facility that is the subject of the receivership.

IV. The purpose of a receivership created under this section shall be to safeguard the health, safety, and continuity of care to residents and to protect them from the adverse health effects and increased risk of death caused by abrupt or unsuitable transfer. A receiver appointed under this section shall not take any actions or assume any responsibilities inconsistent with this purpose.

V. No person shall impede the operation of a receivership created under this section. There shall be an automatic stay for a 60-day period subsequent to the appointment of a receiver, of any action that would

interfere with the functioning of the facility, including but not limited to cancellation of insurance policies executed by the licensee, termination of utility services, attachments or set-offs of resident trust funds and working capital accounts, and repossession of equipment used in the facility.

151-F:4 Authority of Receiver; Duties; Closure of Facility.

I. When a receiver is appointed, the licensee shall be divested of possession and control of the facility in favor of the receiver. The receiver shall have the same rights to possession of the building in which the facility is located and of all goods and fixtures in the building at the time the petition for receivership is filed as the licensee would have had if the receiver had not been appointed. The receiver shall take such action as is reasonably necessary to protect or conserve the tangible assets or property of which the receiver takes possession, or the proceeds of any transfer thereof, and may use them only in the performance of the powers and duties set forth in this section and by order of the court.

II. With the approval of the court, the receiver shall have authority to remedy violations of federal and state law and regulations governing the operation of the facility; to hire, direct, manage and discharge any consultant or employees, including the administrator of the facility; to receive and expend in a reasonable and prudent manner the revenues of the facility; to continue the business of the facility and the care of the residents; to perform those acts necessary or desirable to accomplish the purpose of the receivership; to perform regular accountings and make periodic reports to the court; and to exercise such additional powers and perform such additional duties, as the court may deem appropriate.

III. The receiver shall apply the current revenues of the facility to current operating expenses and, subject to the following provisions, to debts incurred by the licensee prior to the appointment of the receiver. The receiver shall ask the court for direction in the treatment of debts incurred prior to this appointment where such debts appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the facility, or where payment of such debts will interfere with the purposes of the receivership. Priority shall be given by the receiver to expenditures for current, direct resident care, including nursing care, medications, social services, dietary services, and housekeeping.

IV. Revenues held by or owing to the receiver in connection with the operation of the facility shall be exempt from attachment and trustee process. Any retroactive payment that may be due or owing to the facility as the result of a retroactive rate adjustment shall be disposed of in accordance with the orders of the court, after it considers competing claims to said payments.

V. The receiver shall not close the facility without leave of court. In ruling on the issue of closure, the court shall consider:

(a) The best interest of the residents and the possibility of transferring them to suitable, alternative placements.

(b) The rights, interests and obligations of the licensee, the owner, the mortgagees, and other secured parties and lienholders.

(c) The licensure status of the facility.

(d) The condition of the real estate with respect to state and federal construction requirements.

(e) Any other factor which the court deems relevant.

VI. The receiver may make repairs to the facility but only to the extent necessary to prevent or remove jeopardy to the health, safety, or welfare of the residents or to minimally qualify the facility for continu-

ing participation in the Medicaid program, established under Title XIX of the Social Security Act, or in the Medicare program, under Title XVIII of the Social Security Act; provided that the total cost of repair does not exceed \$3,000. Expenditures for this purpose in excess of \$3,000 may be made by agreement of all parties or upon order of the court after motion by the receiver.

VII. In the event that the facility does not have sufficient capital for major repairs or improvements, the receiver may petition the court for permission to apply to the department for a loan. Notice shall be given to the owner of the real estate, the licensee, the department, and to any mortgagee and other secured parties and lienholders of record. The court shall after hearing, authorize the receiver to apply for such assistance if it determines that the facility should not be closed, and the commissioner certifies that the repair or improvement is necessary to prevent or remove jeopardy to patients or to minimally qualify the facility for participation in the Medicaid or Medicare program; or it determines that the facility should be closed and the commissioner certifies that the repair or improvement is necessary to prevent jeopardy to residents for the limited period of time that they are awaiting transfer. The purposes of this paragraph shall be to protect residents and to prevent the closure of facilities which, given proper management, are likely to be viable operations. This section shall not be construed as a method of financing major repairs or capital improvements to facilities which have been abandoned because the licensee has been unable to secure financing by conventional means. Upon court approval, application for financial assistance shall be made to the department, which shall administer such funds as the legislature may appropriate for this purpose. The court may set a reasonable rate of interest to be paid by the receiver to the department. In no case shall funds advanced by the department under this paragraph exceed funds available in the department's civil monetary penalty fund.

VIII. The licensee or the facility owner may apply to the court to determine the reasonableness of any expenditure by the receiver.

151-F:5 Leases, Mortgages or Secured Transactions.

I. A receiver shall not be required to honor any lease, mortgage, or secured transaction entered into by the licensee of the facility if the court finds that the agreement was entered into for a fraudulent purpose or to hinder or delay creditors or that the rental, price or rate of interest required to be paid under the agreement is in excess of a reasonable rental, price or rate of interest at the time the agreement was entered into; or the agreement is unrelated to the operation of the facility.

II. If the receiver is in possession of real or personal property subject to a lease, mortgage or security interest which the receiver is permitted to avoid, and if the possession of such property is necessary for the continued operation of the facility, the receiver shall apply to the court to set a reasonable rental, price, or rate of interest to be paid by the receiver to the person entitled thereto during the duration of the receivership. The court shall hold a hearing on the application within 15-days. The receiver shall send notice of the application to any owners of record and to mortgagees and other secured parties and lienholders of record of the property involved at least 10 days prior to the hearing. In no event shall the amount set by the court exceed what is reasonable for the facility in light of the usual regulations of the department and the private census of the facility. Payment by the receiver of the amount determined by the court to be reasonable shall be a defense to any ac-

tion against the receiver for payment or for the possession of said property subject to the lease, mortgages or security interest involved by any person who received such notice, but the payment shall not relieve the owner or operator of the facility of any liability following the termination of the receivership for the difference between the amount paid by the receiver and the amount due under the original lease, mortgage, or other agreement.

III. Notwithstanding paragraphs I and II, there shall be no foreclosure or eviction during the receivership period where such foreclosure or eviction would, in the view of the court, serve to defeat the purpose of the receivership.

151-F:6 Compensation of Receiver; Recoupment of State Expenditures.

I. The court shall set a reasonable compensation for the receiver that is consistent with the regulations of the department, and may require the receiver to furnish a bond. Such expenses shall be paid from the revenues of the facility.

II. The state shall have a lien for any loan under RSA 151-F:4, VII upon the following property: the building in which the facility is located; the land on which the facility is located; and any fixtures, equipment or goods used in the operation of the facility. Such lien shall be prior to any mortgage or lien which the court finds has been executed or obtained for a fraudulent purpose or to hinder or delay creditors. Such lien shall also be prior to a mortgage or lien held by any person with an ownership interest in the facility; or any person which controls or has the ability to directly or indirectly control to any significant degree the management of policies of the licensee or the facility; or any person related to the licensee or to the facility by any significant degree of common ownership or common control. The receiver shall cause notice of any lien created hereunder to be duly filed.

151-F:7 Termination of Receivership.

I. The court may terminate a receivership under the following conditions:

(a) The department grants a license to operate the facility to the licensee divested of possession and control by the receiver;

(b) There is a transfer of ownership or management of the facility to a transferee approved for licensure by the department; or

(c) All residents of the facility have been provided appropriate alternative placements, either in another facility or otherwise, and the subject facility is closed.

II. Notwithstanding the provisions of paragraph I, a receivership shall not be terminated in favor of the former licensee, or, in the discretion of the court, a related person, unless such person assumes all obligations incurred by the receiver and provides collateral or other assurance of payment deemed sufficient by the department.

III. As an additional precondition to termination in favor of the former licensee, or in the discretion of the court, a related person, the court may require the posting of a bond in an amount fixed by the court as security for maintaining compliance with the laws and regulations governing the operation of the facility. If it shall appear that the licensee fails to maintain the facility in substantial compliance with such laws and regulations, the court, after notice to those persons who have appeared in the proceeding, and after hearing, shall reinstate its order appointing a receiver. A receiver thus appointed may use the security, or such part of the security as is necessary, to remedy the deficient conditions.

IV. The receivership shall be reviewed after 30, 60, and 90 days by the probate court. If the receivership has not been terminated within 90 days of the appointment of the receiver, the court shall, after hearing, order either that the facility shall be closed, after an orderly transfer of the residents to appropriate alternative placements; or the facility shall be transferred, under reasonable terms approved by the court, to a new owner or operator approved for licensure by the department. The receivership period may be extended by the court following the 90-day review only with the agreement of all of the parties involved or as necessary to protect the health and safety of the residents.

V. Within 30 days after termination of the receivership, or such time as the court may allow, the receiver shall submit to the court a final accounting of all property of which the receiver has taken possession, of all funds collected under this section and all expenses of the receivership. The court shall fix the fees and expenses of the receiver and issue orders for the disposition of funds held by the receiver following a hearing, at which time the following parties may appear and be heard: the licensee at the time the receivership was established, the current licensee, the owner of the real estate, the department, and any mortgagee or lienholder whose interests could be impacted by the court's order. Following the court's determination of the receiver's fees and expenses, and the disposition of funds held by the receiver, control of the facility shall be relinquished by the receiver to the current licensee or owner subject to the rights of any third parties.

151-F:8 Actions Against Receiver; Liability. No person shall bring an action against a receiver appointed under RSA 151-F:3 without first securing leave of court. The receiver shall be liable in his or her personal capacity for gross negligence or intentional wrongdoing. In all other cases, the receiver shall be liable in his or her official capacity only, and any judgment rendered shall be satisfied out of the receivership assets.

151-F:9 Effect of Appointment; Violation of Regulations. An order appointing a receiver under RSA 151-F:3 shall have the effect of a license for the duration of the receivership. The receiver shall comply with all state and federal laws and regulations governing the rights of residents and provision of health care services. The receiver shall be responsible to the court for the conduct of the facility during the receivership, and any violation of regulations governing the conduct of the facility, if not promptly corrected, shall be reported by the department to the court.

151-F:10 The department shall adopt rules, pursuant to RSA 541-A and necessary for the implementation of this chapter.

2 Applicability. The repeal under section 3 of this act shall not affect receiverships which are in effect as of July 1, 2005.

3 Repeal. RSA 151-F, relative to receivership of nursing homes and other residential care facilities, is repealed.

4 Effective Date.

I. Section 3 of this act shall take effect July 1, 2005.

II. The remainder of this act shall take effect January 1, 2004.

2003-1849s

#### AMENDED ANALYSIS

This bill details the procedure for nursing homes and other residential care facilities in receivership. This law is repealed on July 1, 2005; provided, that the repeal shall not affect receiverships in effect on such date.

SENATOR MARTEL: Thank you Mr. President. I rise to offer the floor amendment. It is not being passed out. I move ought to pass on this bill

HB 709 with amendment. The bill establishes actually a legal process by which the state can petition the probate court to appoint a receiver when a nursing home is forced to close its doors. Receivership will allow a facility to stay open in order to ensure a safe and humane transition for the residents or to act to protect the health and safety until a compliance has been reached. Although this is a bill that the department hopes that it will never have to use, it is a rare instance that when a nursing home is forced into receivership. Thank you. House Bill 709 is a proactive bill and will provide for a smooth transition and the committee unanimously recommends ought to pass motion. I thank you Mr. President. There are very few, very minor changes in the amendment from the bill. Well I guess that I shouldn't go into discussing the changes at this time. It is a good amendment and all sides have agreed to it, so I urge my fellow Senators to please do the same.

SENATOR BARNES: Thank you Mr. President. If we pass this, is it going to go to Finance, because I don't see any fiscal note on it?

SENATOR EATON (In the Chair): This will not be going to Finance.

SENATOR BARNES: There is no fiscal note on this? It is cost free?

SENATOR EATON (In the Chair): That is correct.

SENATOR BARNES: By God, we need a few more of those.

SENATOR LARSEN: Senator Martel, while I recognize and heard the discussion that the power went out and there was a need to quickly exec this and do the amendment as a floor amendment, I am wondering if, since it is not a fiscal note bill, whether we couldn't table it for a week and have a chance to read this, at least know that it is correctly written? It is a big bill for us to quickly pass on this seven pages of language relating to receivership.

SENATOR MARTEL: I thank you for that question, Senator Larsen. It may be seven pages long, but there are only five areas in that whole amendment that have been changed compared to what the original bill was. I can give you copies of what the changes are if you wish to have that? There were changes that were agreed to by all the parties. The Department of Health and Human Services, the lobbyists and the sponsors of the bill. So, I have no opposition if you want.

### **MOTION TO TABLE**

Senator Martel moved to have **HB 709-FN** laid on the table.

**Adopted.**

### **LAIID ON THE TABLE**

**HB 709-FN**, relative to nursing homes in receivership.

**HB 82**, to change the name of "Mount Clay" to Mount Reagan. Wildlife and Recreation Committee. Ought to pass, Vote 5-0. Senator Sapareto for the committee.

SENATOR SAPARETO: Thank you Mr. President. Mr. President, I move HB 82 ought to pass. This bill changes the name of "Mount Clay" to "Mount Reagan". No disrespect to the reputation of Mr. Clay. Mount Clay is the only mountain in the Presidential Range, in that series of mountains that is not named for a President. It is unquestionable that President Reagan was one of the most influential President's of modern times and what a better way to commemorate this man's hard work

and dedication to his country and his people, than to name one of New Hampshire's mountains in his honor. While we may hear commentary in opposition to the name change, in the end, the state has the right, if it so chooses, to change the name of this mountain. The Wildlife and Recreation Committee recommends HB 82 ought to pass and seeks your support. Thank you.

SENATOR BARNES: Senator Sapareto, if this bill passes, which I certainly hope it will, is there something set up so that a copy of the legislation is sent to the President out in California where he lives so he will have that for his records?

SENATOR SAPARETO: No there is not, but I would be happy...I think that would be a wonderful idea, Senator.

SENATOR BARNES: Thank you.

SENATOR BELOW: Thank you Mr. President. I rise in opposition to the proposed bill. It is true that we have a Presidential Range and we also...part of that range is former "Mount Clinton", renamed by the Legislature "Mount Pierce." And across from it is the Carter Range, and we certainly have lots of Bushes in the White Mountains as well. The Carter Range and Mount Clinton, of course, were named long before either Jimmy or Bill were elected President. The problem with this bill is that President is still living, the former President. Under the federal law, the Bureau of Names of the U.S. Geological Survey, has jurisdiction of naming of natural features. Their policy requires that "no natural features may be named before a person is dead, and no name change may occur within less than five years after the person's death." I think their policy and concern, which we should share, is that the naming of geographical features needs to be consistent for the purposes of standardization, emergency response and national security. It was almost a century ago that Mount Clinton was renamed Mount Pierce, yet we still have both names on the map and a Mount Clinton Trail. It is interesting to note that the very first mountain in the Presidential Range at Crawford Notch is actually Mount Webster, named after Daniel Webster, of course who was never a president. It is also interesting to note that Henry Clay was a distinguished legislative leader and we tend to obviously think in terms of presidents as our leaders, but we also need to keep in mind that legislative leaders have played a very important role in our nations history. Certainly I recognize and respect that many people want to commemorate President Reagan with naming of something. I think in terms of geographic feature, particularly one within the National Forest, that won't be recognized as a changed name, will have two names for at least some indefinite period of time. I think that it would be better to wait and we can find something that we can change the name of that is appropriate and would be recognized in uniform manner. Thank you Mr. President.

SENATOR D'ALLESANDRO: Thank you Mr. President. I rise in opposition to the bill and certainly not out of any disrespect for President Reagan because we have named a number of things after President Reagan and people have shown their great respect for him. The National Airport is now Reagan National Airport. Mount Washington was named Mount Washington in 1784. The rest of the range, named to the subsequent presidents was named in 1820. Mount Clay was given its designation for a particular reason. Henry Clay was a statesman who possessed a great deal of presidential ambition, but who never achieved the office of the presidency. But he did run for President three times. In 1824, 1832 and 1844.



We should have a great deal of respect for Henry Clay because he came through the process just as we do. He was a Congressman, he was Secretary of State, and he was a United States Senator. He was a distinguished public servant. Henry Clay is noted for a piece of commentary that I think that all of us have heard at one time or another. Henry Clay said, "Sir, I would rather be right than be President." Henry Clay is known historically, as the great pacificator and the great compromiser. What was his great compromise? He held the union together. He held the union together at a time when there were dividing forces that were trying to pull our union apart. Pull this great United States of America apart. Because of Henry Clay's perseverance, he kept this union together. The people of New Hampshire recognized that and named a mountain in his honor. Mount Clay. Out of respect for the work that he had done for his country as a Congressman, a Secretary of State, a United States Senator, and ran three times for the Holy Grail, the Presidency of the United States. So we should honor the New Hampshire traditions. Our New Hampshire forefathers named it Mount Clay. What better way to honor a person who has given something, not only to the people of the state of New Hampshire, but to the United States of America? And, did it by the way, by only having three years of formal schooling. Three years of formal schooling. Then by learning, by being a student, actually became a lawyer and taught law at Transylvania University. You know that is quite an accomplishment. Three years of public schooling and ends up being a Congressman, a Secretary of State, a lawyer, three times runs for the Presidency of the United States. From the historical standpoint, is called the great pacificator, the great compromiser. Pretty good lineage for a conservative. He was a conservative. We love those conservatives. Don't we, Senator Odell? So here is Henry Clay recognized by New Hampshire. Why should we take that away? There will be many naming opportunities. It just seems to me from a historical perspective, we did the right thing in the 1820's. We did it. We did it based on the facts and the fact that the most precious thing was the salvation of the union, right? When we talk about what Lincoln did to preserve the union. We say the precursor was Henry Clay. Thank you Mr. President.

SENATOR SAPARETO: Thank you Mr. President. Senator Below, actually this question is in regard to the remarks made by Senator D'Allesandro. He mentioned that in 1874 Mount Washington was named after President Washington, who passed away in 1799. I also refer to Mount Jefferson and Mount Adams being named in 1820. And as you are probably aware, they died within minutes of each other in the year 1826, not within the five years, so why should that rule...why would that rule not apply? Are you suggesting that maybe we should rename those mountains because they weren't done within that five-year rule?

SENATOR BELOW: Those have certainly become the recognized names. I am just observing that as a matter of national policy, we have a U.S.G.S. and a Bureau of Geographic Names that has a policy of waiting until five years after someone has...is deceased before recognizing that, in this day and age. I don't know whether that is a good policy or bad policy. All that I know is that it is the policy and what we are doing conflicts with that. So for that reason alone, I think that it would be better to avoid that conflict. I have a question for Senator Sapareto, if I may? I think that you said that all of the mountains in the Presidential Range were named after presidents. I am looking at my map here and we have both Mount Webster and Mount Franklin, which I believe was named after Benjamin Franklin. Would you believe that those are not named after presidents?

SENATOR SAPARETO: Yes, and in my statement I mentioned that, those in succession of the five peaks surrounding Mount Washington.

SENATOR BELOW: Thank you.

SENATOR SAPARETO: Thank you.

SENATOR BARNES: Thank you. Senator D'Allesandro, you mentioned three times during your remarks that Mr. Clay, the noble Mr. Clay, noble conservative Mr. Clay, ran for President three times. Does that mean that Howard Stassen who ran for President six times should also be recognized somewhere down the road?

SENATOR D'ALLESANDRO: Harold Stassen?

SENATOR BARNES: Harold Stassen.

SENATOR D'ALLESANDRO: Well I think that we ought to recognize him for having perseverance.

SENATOR BARNES: So what do we name after him?

SENATOR D'ALLESANDRO: Well I think the fact that we remember his name here is a tribute to Harold Stassen. You brought it up and I appreciate that very much. I am sure that he does, too.

SENATOR BARNES: I have one more question. It is a would you believe. This is on the serious side, not that Mr. Stassen isn't serious, six times he had to be serious. God, he has perseverance plus. Would you believe that in Raymond a few years ago, we had a hot debate on naming a school after a teacher who had been there for 30 some years, who still lived in town? It was a real hot debate. A certain big mouth got up and said for Gods sake, let's name it after this lady before she dies. You know something, we named it after her before she died. She died about two years later. She was about the happiest sucker in Raymond. She was floating along on her carpet because there was a school named after her while she was still alive. If we are going to do something, to name things after people, I think that they should do it before they die and not after they die so that the people can realize that a lot of people had respect for them. This is a typical example. President Reagan...I am going to ask for a roll call on this. I look at it as a no-brainer. I think that it is something that we should do. I am on the piece of legislation, I believe. I was happy to go onto that piece of legislation. I want President Reagan to have a copy of this so that his wife can read it to him and say, hey the state of New Hampshire, look what they have done for you. Would you believe?

SENATOR D'ALLESANDRO: I'd certainly believe that.

SENATOR BOYCE: Thank you. Someone had previously mentioned that the federal government somehow believes that they have the right to tell us what and when we can name in this state. I just...I like Article 7, Part I of our Constitution. "State Sovereignty. The people of this state have the sole and exclusive right of governing themselves as a free, sovereign, and independent state; and do, and forever hereafter shall exercise and enjoy every power, jurisdiction, and right, pertaining thereto, which is not, or may not hereafter be, by them expressly delegated to the United States of America in congress assembled." I would really like to see exactly where the federal government has been granted by us, the specific right of allowing them to tell us what piece of our sovereign territory we can name, after whom, when, where, how and why. I don't know if we have ever done that specifically and I thank you very much.

SENATOR COHEN: Thank you Mr. President. I would say that one of the best things to come out of this discussion is increasing the public awareness of who Henry Clay was. That was a very positive thing. Most people I'd imagine were not aware of the accomplishments and the character of Henry Clay, and as a result of this discussion, that certainly...that education and understanding certainly has enhanced. It is often good to have discussion about moments in history so that things that may have been little known, to get more public awareness. At the same time, the reality is we, in this body, and in the State House, can do what we want. The fact is, it is not going to be on the maps. It is going to be recognized on the geological maps as Mount Clay because they have their rules, very specific geological survey rules, that a person must be dead for at least five years before a landmark can be named for that person. I brought up the question to Fish and Game, if there is a difficulty, if somebody is lost on Mount Clay/Mount Reagan, is there a problem? They assured me that there is not a problem because it is not very difficult to figure that out, that they are one in the same, so there won't be that kind of difficulty. I also think that we should all recognize that it is far too early for history's judgement on the Presidency of Ronald Reagan. I certainly have my differences with him. I know that you are shocked to hear that. It is true. I did not like the precedent of having huge deficits, but I don't want to get into that. The fact is, I do believe that, agree with him or disagree with him, the independent spirit of Ronald Reagan, I think we should recognize...does resonate with the independent spirit of the people of New Hampshire, and I believe some recognition is indeed appropriate.

SENATOR SAPARETO: Thank you Mr. President. Senator Cohen, if the United States Geological Service decides that every lake, river and stream in New Hampshire has to end in a vowel, should we abide by that?

SENATOR COHEN: I don't...that is not going to happen.

SENATOR D'ALLESANDRO: They would then be Italian rivers and streams.

SENATOR COHEN: I did refrain from asking the question of Senator D'Allesandro if he had the opportunity to coach Henry Clay. He may have.

SENATOR D'ALLESANDRO: Thank you Mr. President. I want to be brief. These mountains, the mountains that we currently named, were named by New Hampshire people. The Lancaster Group named these mountains. As a matter of fact, Phillip Carrigan who was Secretary of State had a mountain named after himself, so we have Mount Carrigan. So they were named by New Hampshire people. Henry Clay was selected by New Hampshire people for his accomplishments. Henry Clay died in 1852, so I don't know the exact date of the naming of Mount Clay, but it may have been named before he passed away. But the fact of the matter is, and my iteration and reiteration is that New Hampshire people thought enough of Henry Clay to name a mountain after him because of his activities in the public venue and in the public's eye. As I said, we know him as the great pacificator and the great compromiser, and that will forever be in history. Thank you Mr. President.

SENATOR LARSEN: Thank you Mr. President. I think in the discussion we need to recognize that the Federal Board of Geographic Names governs the commemorative naming process, not a state or local authority, and that they say that there are no exceptions to the two requirements. The first exception being that no natural feature may be named before

a person is dead. Two, no name change may occur within less than five years after the persons death. While they say you can't do this, you can in fact, but what they caution is, for a state to do this, upsets what is meant to be a consistent policy of naming geographic features. The reason for consistency, obviously is for emergency response and national security as well as the more common understanding of standardization. We did hear from the AMC for example, that changing this name will not mean that when you open up your AMC Guidebook to hike this mountain, it will still be called Mount Clay. Many, many people, myself included, have these books at home. What happens with an emergency response? So while we can change this name, in fact, it will not be recognized likely by the Board of Geographic Names. If it is not accepted by that Board of Geographic Names, it will not appear on U.S.G.S. topographic maps, guidebooks or the U.S. Forest Service signs, maps and tourist brochures, leading to what I believe will be greater confusion. In addition, I would urge you, as you have heard, Henry Clay was known as the great compromiser and he in fact, promoted and strengthened and was an advocate for the union, and apparently his dedication to that led to our nation having about ten more years of peace before the Civil War, at which time the North was able to strengthen its forces in a way that it was able to secure the union over time. In the interest of having...understanding that there is a great impetus here in this body, regardless of what we say to recognize Mount Clay as Mount Reagan, even though you know it will not be on U.S. Topographical maps and may cause confusion, I rise to offer a floor amendment.

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist. 15

**May 29, 2003**

**2003-1893s**

**06/09**

### **Floor Amendment to HB 82**

Amend the title of the bill by replacing it with the following:

AN ACT to change the name of certain mountains.

Amend the bill by replacing all after section 2 with the following:

3 Carter Dome and Carter Notch. The mountainous elevation known as Carter Dome and the geologic feature known as Carter Notch which are located in the White Mountain range, shall hereby be known to be named for President James Earl Carter, Jr., the 39<sup>th</sup> president of the United States.

4 Effective Date.

I. Sections 2 and 3 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

**2003-1893s**

### **AMENDED ANALYSIS**

This bill changes the names of "Mount Clay" located in the White Mountains to Mount Reagan. The bill also states that Carter Dome and Carter Notch shall be known to be named for President James Earl Carter, Jr.

SENATOR LARSEN: I rise to offer a floor amendment, which I would like distributed at this point. In the interest of the great compromiser, you have the opportunity with this amendment, to name the Carter Dome and Carter Notch, which are already known as Carter, so they are on the maps, but to in fact, recognize those locations to hereby be known

to be named for President James Earl Carter, the 39<sup>th</sup> President of the United States. You will notice that I am not approaching the issue of Clinton, Mount Clinton, because in fact, that was renamed in 1913 and I believe shows up on the maps. There would be confusion, but to recognize Carter Dome and Carter Notch as being named for President James Earl Carter the 39<sup>th</sup> President of the United States is an effective compromise which I believe would be healthy for all of us to do. I worked on Jimmy Carter's campaign in fact, and he, as you know, has been recognized for his human rights advocacy. He is known for the Panama Canal Treaties, the Camp David Accords, the Treaty of Peace between Egypt and Israel, the Salt Treaty with the former Soviet Union, the Establishment of U.S. Diplomatic Relations with China and his championship for human rights throughout the world and the founding of the Carter Center. I think that in the spirit of the great compromiser, we can in fact, join with you, perhaps in the naming of this mountain, if you can join with us, to at least recognize what is already Carter Dome and Carter Notch, the highest points in the Carter series for former President, James Earl Carter. So I urge you to vote yes on floor amendment 1893.

#### **Recess.**

#### **Out of recess.**

SENATOR BELOW: Senator Larsen, would you believe that I can support your amendment if we further amended the bill so that the provision concerning President Carter would be effective five years after the death of President Carter and the provision concerning President Reagan would be effective five years after his death as well?

SENATOR LARSEN: I understand your concern. My only point is that we aren't in fact renaming Mount Carter at all, we are just effectively recognizing in the state that that name stands for James Earl Carter. We were saying that we aren't even aware who Mount Carter is named after. Because it is different, we are not renaming the mountain. But I understand your concern and I would be willing to wait for an amendment if you prefer to do it that way?

SENATOR BELOW: Thank you.

SENATOR KENNEY: Senator Larsen, if you don't know who this person "Carter" is in the original mountain, dome or notch, wouldn't it be prudent to first of all, find out who this Carter person is to find out the significance in history? My second question would be, wouldn't it also be prudent to go ahead with a public hearing on this so that the public can engage themselves on renaming this particular location for President Carter who in all rights is a great citizen, American, President and in particularly Post-President?

SENATOR LARSEN: Senator Kenney, we only named two of the Carter series. Two of the highest locations. We left the middle or the south, I can't remember, but one of them retains the name of Mount Carter without its designation for the President. There are in fact three locations named Carter that I imagine are kind of like Tripyramid with...there is a middle, south and Carter Dome, so we left one of them unnamed for President James Earl Carter, allowing whoever the other Carter was, to still have one.

SENATOR KENNEY: Would you believe, Mr. President, that I am confused?

SENATOR MARTEL: Thank you very much Mr. President. This is very short. I just want to thank Senator D'Allesandro for rekindling fond memories about the life of Henry Clay. As it was, when I had him as a teacher in my U.S. History class in college, that he taught me about Henry Clay once again after high school, and now for the third time. Okay? So I thank him also for the wonderful grade he gave me back then too. Thank you.

SENATOR EATON (In the Chair): Still sucking up aren't you?

SENATOR FOSTER: Thank you Mr. President. I wasn't going to speak because I think that a lot of the issues on this have been laid out and Senator Cohen touched on my concern. I am going to vote against the amendment and against the bill itself. I do that because I think that there is probably a good reason why the federal government's regulations talk about naming things five years after somebody's death. I think that it is the difference between having a political perspective on somebody and a historical perspective on somebody's life. All of us lived through Ronald Reagan's Presidency. We either admire him or don't. We probably all admired him for certain things, and other things we may not have admired him about. The same thing with Jimmy Carter. I think that many of us admired him when he was President. Some of us may have admired him after he was no longer President. Some of the greatest things that he has done is after he was no longer in office, I think, for many of us. So to my mind, I think that there is a reason for that five year rule. I would suggest and at least a couple of Senators here, lived through President Truman's Presidency, probably after he came out of office, many of us, might not have admired him so much, he was a controversial figure a lot of time during his presidency, and yet, with perspective, I think that the greatness of his presidency is felt a lot more now in David McCullough's book, which probably many of you have read. The things that he had to deal with were extraordinary, and as time went on, I think that people feel the greatness of his presidency. President Roosevelt, obviously another great President that we don't have a mountain named after. To me, those two gentlemen ought to be looked at. There are years that have gone by since their deaths, and I think the five year old is there for a reason, so I will be voting against both the amendment that Senator Larsen has and the bill as well. Thank you.

**Floor amendment failed.**

**Question is on the motion of ought to pass.**

SENATOR PETERSON: Thank you Mr. President. I would like to briefly address this bill. It, I believe, is appropriate that we have a serious discussion about this issue because indeed the natural features which grace our landscape have a dignity, perhaps even a divinity to them, that merits consideration when we decide about a naming of such a physical feature. I don't believe that it is properly a subject to be infused with partisan politics, but be discussed upon the merits. Back in 1980, and the election in 1980 when we elected Ronald Reagan, I was engaged in working for Howard Baker, who is one of his primary opponents, and went all over the state of New Hampshire in working for him. Upon his election, I was privileged to be asked to join the Senate staff of Senator Warren Rudman, and went to Washington and had the experience of standing on the Capitol lawn to listen to President Reagan's first inaugural address where he spoke of a new beginning for our country. I must admit that although I did not support him in the primary, I did support him in

the general election, I felt a tingle go up my spine as I listened to that speech. I think that there are many in the country who felt the same way. We began to sense that we really had quite a person on our hands here and someone who could truly be a great President. I don't think, Mr. President, that we need to wait for five years after Ronald Reagan's death to conclude that he, like Mr. Clay, and yes, like President Lincoln, faced a great division as well. They faced a division that threatened the unity of our country. He faced a division and a war between super powers, a cold war, which threatened the peace and security of our entire world. It lead to an arms race, which was escalating detrimentally. Indeed, challenged our opportunity to continue our existence on this planet. There is no question, and we don't need to wait five more years to conclude that it was his leadership that lead to the fall of the Berlin Wall and that indeed, this signaled the end of the Cold War and the birth of a new era for this entire planet. I think that it is time for us to step up to the plate and vote for this legislation, and indeed, honor this great President of the United States of America. Thank you.

### **PARLIAMENTARY INQUIRY**

SENATOR LARSEN: Parliamentary inquiry?

SENATOR EATON (In the Chair): Parliamentary inquiry.

SENATOR LARSEN: If I believe that for purposes of standardization, emergency response, we cannot rename this and also protect the safety of our citizens, would I vote no on this name change to HB 82?

SENATOR EATON(In the Chair): If you are for HB 82 you will vote yes. If you are not, you vote no.

SENATOR LARSEN: Thank you.

**Question is on the motion of ought to pass.**

**A roll call was requested by Senator Sapareto.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott, Cohen.**

**The following Senators voted No: Below, Foster, Larsen, D'Allesandro, Estabrook.**

**Yeas: 18 - Nays: 5**

**Adopted.**

**Ordered to third reading.**

SENATOR BARNES (Rule #44): Thank you Mr. President. Seeing that we have had quite a history lesson in the last 45 minutes to an hour, I want to bring everybody's attention to an American icon who is having his 100<sup>th</sup> birthday today. That is a person who our troops and our country owe an awful lot to. He is a refugee from Britain. He became an American citizen and many of us had many belly laughs, continue to, when we see Bob Hope. I think that I would like to lead a sing-a-long, happy birthday to an icon, Bob Hope. There is a real American icon.

SENATOR COHEN (Rule #44): In the spirit of bipartisanship, I would also like to recognize that today is also the birthday of another of our President's who happen to be a democrat, John F. Kennedy. I won't request the singing of happy birthday, once was enough.

**HB 162**, relative to remedies and penalties for injuries to domestic animals caused by dogs. Wildlife and Recreation Committee. Ought to pass with amendment, Vote 4-0. Senator Roberge for the committee.

**Wildlife and Recreation**

**May 20, 2003**

**2003-1723s**

**08/04**

**Amendment to HB 162**

Amend the bill by replacing all after the enacting clause with the following:

1 Remedy and Penalties for Injuries Done by Dogs; Killing Dogs Legalized. Amend RSA 466:28 to read as follows:

466:28 Killing Dogs Legalized. Any person may kill a dog that suddenly assaults [the] **a** person while such person is peaceably walking or riding without the enclosure of its owner or keeper; and any person may kill a dog that is found out of the enclosure or immediate care of its owner or keeper worrying, wounding, or killing sheep, lambs, fowl, or other domestic animals. ***However, this paragraph shall not permit the owner or keeper of agricultural livestock to kill a dog if that person has not confined his or her livestock within a building or fenced pen, but permits them to range freely outside and across an unfenced boundary on to the land of a neighbor.***

2 Effective Date. This act shall take effect January 1, 2004.

**2003-1723s**

**AMENDED ANALYSIS**

This bill provides for the legalized killing of dogs that wound or kill certain domestic animals provided such domestic animals are fenced in on the owner's property.

**MOTION TO TABLE**

Senator Roberge moved to have **HB 162** laid on the table.

**Adopted.**

**LAID ON THE TABLE**

**HB 162**, relative to remedies and penalties for injuries to domestic animals caused by dogs.

**MOTION TO REMOVE FROM THE TABLE**

Senator Prescott moved to have **HB 281-FN** taken of the table.

**Adopted.**

**HB 281-FN**, exempting automatic irrigation system installers from licensure by the electrician's board.

**Question is on the adoption of the committee amendment (1396).**

**SENATOR PRESCOTT:** I would like to have the committee amendment voted down so that the underlying bill, which is the bill passed by the House, which is an exemption bill and not a licensure bill, can be passed with this amendment. So the first order of business, I believe, is to vote down the committee report of ought to pass with amendment. Thank you Mr. President.

**SENATOR ESTABROOK:** Thank you Mr. President. I just wanted to rise **TAPE CHANGE** chamber, the members for their patience in mov-



ing this bill forward finally. It has been a long road but I think that the compromise that we have achieved is going to work well. Thank you all.

**Amendment failed.**

Senator Prescott offered a floor amendment.

Sen. Prescott, Dist. 23

**May 29, 2003**

**2003-1871s**

**08/10**

**Floor Amendment to HB 281-FN**

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect upon its passage.

SENATOR PRESCOTT: Yes, my new amendment is that the House passed version would be amended for replacing the section II with an effective date upon its passage. That is amendment 1871's. Thank you very much, Mr. President.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**MOTION TO REMOVE FROM THE TABLE**

Senator Kenney moved to have **HB 819** taken off the table.

**Adopted.**

**HB 819**, relative to original and youth operators' licenses.

SENATOR KENNEY: Thank you Mr. President, I would like to speak to HB 819 if I may. House Bill 819 as you recall many weeks ago, the bill was to modify the expiration provision for youth operators' licenses held by a person over 18 years of age. This bill was established to separate an original drivers license to be issued upon the expiration of the youths operators license to expire on their twenty-first birthday. One of the reasons for this piece of legislation was to allow the Department of Safety to create a different type of shape of a youths operator license card. This legislation has the Department of Safety's support. I would encourage you to support it.

SENATOR BOYCE: The reason that this was put on the table was that I had somebody who wanted to bring forth an amendment to this bill, that had totally unrelated, but had similar subject matter, similar RSA, and that amendment never came forward, so there is no reason to keep it on the table now.

SENATOR LARSEN: Just quickly. As the only Senate sponsor of this bill, I would urge you to pass this. It will in fact help the many small businesses in our state. It was brought to my attention at a request of a constituent of mine, who runs a small business, that oftentimes people who are looking at a license for a youthful operator, especially if they don't have their glasses on or they are elderly and they are running the cash register, they have difficulty knowing for sure, the age of the person when they try to card them. This will in fact, make a youth operators license look very different, and will in fact, be an identifiable youths operator license for the five-years, presumably five-years that they are

driving as an underage or under the age of 21. As I say, I think that this will help small businesses across the state and I urge you to vote ought to pass on HB 819.

SENATOR CLEGG: Thank you. I would like to point out that the prime sponsor is a constituent of mine and I am going to support this bill.

**Question is on the committee report of ought to pass.**

**Adopted.**

**Ordered to third reading.**

SENATOR GALLUS: Thank you very much Mr. President. House Bill 419 is just basically another study committee and serves really no purpose, and I would ask you to vote no on taking it off the table. I thank you.

### **MOTION TO REMOVE FROM THE TABLE**

Senator Kenney moved to have **HB 419** taken of the table.

**Motion failed.**

### **PARLIAMENTARY INQUIRY**

SENATOR KENNEY: Parliamentary inquiry?

SENATOR EATON (In the Chair): okay.

SENATOR KENNEY: The Senator Gallus, the honorable Senator from district one had a chance to speak on that. I am just wondering...I didn't have a chance to offer my other side of it.

SENATOR EATON (In the Chair): We have next week, Senator Kenney. We will work on that one.

### **MOTION OF RECONSIDERATION**

Senator Peterson, having voted with the prevailing side, moved reconsideration of **HB 105**, relative to sexual assaults committed by corrections officers, probation and parole officers, and juvenile probation and parole officers against individuals under their supervision, whereby we ordered it to third reading.

### **PARLIAMENTARY INQUIRY**

SENATOR BOYCE: Parliamentary inquiry?

SENATOR EATON (In the Chair): Yes.

SENATOR BOYCE: Just to remind myself of what this is, this is the bill that would change the effective date to make the floor amendment that was offered by Senator Peterson earlier, effective immediately and not wait until January. Is that true?

SENATOR EATON (In the Chair): I believe it is true and I think the motion for the amendment will follow.

SENATOR BOYCE: Thank you.

**Question is on the motion of reconsideration on HB 105.**

**Adopted.**

**HB 105**, relative to sexual assaults committed by corrections officers, probation and parole officers, and juvenile probation and parole officers against individuals under their supervision.

Senator Peterson offered a floor amendment.

Sen. Peterson, Dist. 11

**May 29, 2003**

**2003-1887s**

**04/10**

**Floor Amendment to HB 105**

Amend the bill by replacing section 9 with the following:

9 Effective Date.

I. Section 6 of this act shall take effect as provided in section 7 of this act.

II. Sections 7 and 8 of this act shall take effect upon its passage.

III. The remainder of this act shall take effect January 1, 2004.

SENATOR PETERSON: Thank you Mr. President. Although it was a good catch on the part of Senator Boyce, for which I am very grateful, the amendment was drawn in my name, so I will offer the floor amendment to make the effective date on the floor amendment, which we approved previously, upon passage as opposed to January 1, 2004, which I believe is appropriate to the purpose intended. Thank you.

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**MOTION TO REMOVE FROM THE TABLE**

Senator Martel moved to have **HB 393** taken of the table.

**Adopted.**

**HB 393**, extending the reporting dates for certain study committees.

SENATOR MARTEL: As this is being passed out Mr. President...the bill was originally put on the table because of the House not having processed a bill, one of the Senate bills on the Commission to...to establish a commission for the education of the deaf and hard of hearing, here in the state of New Hampshire and its continuance. They did so last week and it went through the House today. We can now, in its proper order, place these two bills back and have us vote on them. I would urge you to please vote HB 393 ought to pass as amended.

**Question is on the adoption of the committee amendment (1368).**

**Amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

**Ordered to third reading.**

**RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be by this resolution read a third time and all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

**LATE SESSION****Third Reading and Final Passage**

**HB 82**, to change the name of "Mount Clay" to Mount Reagan.

**HB 105**, relative to sexual assaults committed by corrections officers, probation and parole officers, and juvenile probation and parole officers against individuals under their supervision.

**HB 139**, relative to the collection and reporting of school drop-out, suspension, and expulsion data and relative to the deadlines for submitting certain reports to the department of education.

**HB 210-FN-A**, relative to passenger tramway registration fees and relative to carnival or amusement ride fees.

**HB 259**, relative to the regulation of gift certificates under the consumer protection act.

**HB 281-FN**, exempting automatic irrigation system installers from licensure by the electrician's board.

**HB 295**, relative to information filed with the regional planning commissions.

**HB 303**, relative to life, accident, and health technicals.

**HB 393**, extending the reporting dates for certain study committees.

**HB 420**, relative to state-owned trails and parking lots in the town of Windham.

**HB 431**, eliminating application of the rule against perpetuities to instruments that contain safeguards relative to the continued alienability of property.

**HB 460-FN**, relative to property and casualty insurance.

**HB 507**, relative to certain statutes that set minimum requirements for employee benefit plan procedures pertaining to the filing of benefit claims, notification of benefit determinations, and appeal of adverse benefit determinations.

**HB 568-L**, relative to legal residency for the purpose of public school education.

**HB 591-FN**, allowing a certain former state employee to apply for accidental disability benefits.

**HB 601**, relative to the long-term care insurance act.

**HB 725**, relative to fraternal benefit societies.

**HB 737-FN-A**, relative to the state conservation committee and making an appropriation therefore.

**HB 738-FN-A-L**, permitting aid to public water systems to be used for forming or improving regional water systems and making an appropriation therefor.

**HB 753**, establishing the fourth Monday in April as General John Stark Day.

**HB 819**, relative to original and youth operators' licenses.

**ANNOUNCEMENTS**

SENATOR D'ALLESANDRO (RULE #44): Thank you Mr. President. Yesterday a very distinguished American from Concord passed away. His name

is Frank Sullivan, Jr. Frank Sullivan was one of the great, great people that I have met in my life. He was a person who was endlessly contributing to good causes. He and his family established a house for HIV infected people here in Concord. He was a constant giver to the University of New Hampshire. He loved the football program at the University of New Hampshire, went to games, established a scholarship in his wife's name. His wife's maiden name was Virginia King. Bambi King was a classmate of mine at the University and a hockey player. Frank endured some extreme physical pain before he passed away. He had an ulcerated stomach which required immediate surgery at the Concord Hospital. At the same time, Frank was a diabetic and was in danger of losing one of his limbs. He passed away without losing his limb and he made a commitment that he wouldn't have his limb amputated even if it meant his passing. I remember Frank Sullivan and I hope that everybody in this body will remember Frank Sullivan for two things: He was a giving human being, both in a financial sense, where he stepped up to the plate for the University and for individuals, but in terms of his time and his willingness to do things that people weren't willing to do. Establishing a home for HIV infected people. He was willing to do that when it just wasn't the way people were acting in those days. We always remember people when they pass away. It seems to me that that is something that we are doing over and over again, yet their lives were so important to our lives, and their commitment so important to us, because in many ways, Frank Sullivan had not only the opportunity, but took advantage of the opportunity to make other peoples lives better when he was alive. That is the best tribute that I can give to anybody. In his passing, I look at with great sorrow, but I say that the last thing that Frank did is when he was alive, and was able to do good things, he did good things. That is the greatest tribute that any of us can leave. When we are here, we did good things to help others. I hope all of us can remember Frank. Those of us that were close to him feel a tremendous loss. A tremendous loss. By the same token, the tremendous gain in my life was knowing Frank Sullivan. I am blessed in that respect. I hope that I am a better person because of that. I think that this community and this state was better for his being here. Thank you Mr. President.

SENATOR EATON (In the Chair): I know that Senator D'Allesandro talked earlier about his long years of marriage and how that isn't very often anymore. It has been 22 years with Senator Prescott, and I just want to commend Loa Winter for putting up with Steve for the past 39 years, which their anniversary is tomorrow, so nice longevity.

SENATOR LARSEN (RULE #44): Just quickly. Sitting with my seatmate, Senator Gatsas and I both recognized that we celebrated our anniversaries on the same day last Saturday. He has seventeen years and I have twenty-eight years of happy married life. It is a nice month for that. I would also point out that while there was a Healthy Kids Lunch, and I know that the people of that organization are very happy with what Senate Finance has done with the Healthy Kids Funding. They unfortunately, I believe, are no longer over there for lunch. I am not sure where the lunch went, but they thank you nonetheless.

SENATOR EATON (In the Chair): Thank you and congratulations to the both of you.

**RESOLUTION**

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of receiving House Messages and processing Enrolled Bill Reports and Amendments, and that when we adjourn, we adjourn to the Call of the Chair.

**Adopted.**

**In recess to the Call of the Chair.**

**Out of Recess.**

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

**HCR 15**, relative to relaxing air quality standards by the United States Environmental Protection Agency.

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Bills sent down from the Senate:

**SB 64-FN**, relative to updating the drought management plan.

**SB 83**, relative to paralegals and legal assistants.

**SB 97**, limiting the liability of firefighters working for certain private firefighting units.

**SB 140-FN**, establishing an optional renewal period for licenses to carry a pistol or revolver.

**SB 148-FN**, relative to the regulation of water treatment equipment installers by the plumber's board.

**SB 168**, allowing school boards to adjourn to nonpublic session to consider pupil disciplinary matters.

**SB 169**, relative to frivolous actions against the state concerning state construction projects.

**SB 188-L**, establishing a commission to study improving the enforcement of traffic laws in high traffic areas.

**SB 201**, establishing a committee to study insurance practices relative to homeowner's insurance.

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bills sent down from the Senate:

**SB 116**, establishing a committee to study methods to prevent or reduce the high school dropout rate.

**SB 133**, relative to amending the charter of Dartmouth college.

**SB 177**, relative to credit unions.

**SB 178**, relative to guaranty funds.

**SB 180**, making certain changes in the banking laws.

**SB 181**, relative to investigations by and license revocation appeals to the board of trust company incorporation.

**SB 193**, extending the report date for the commission on the education of the deaf and hard of hearing in New Hampshire and the commission on architecturally secure facilities and community shelter care facilities for juveniles.

**SB 226-L**, increasing the homestead exemption.

### HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

**HB 66-FN**, relative to executive agency rulemaking authority.

**HB 75**, relative to timber harvesting.

**HB 123**, relative to notice given to putative fathers in adoption proceedings.

**HB 214**, relative to discovery deposition of minors in criminal cases.

**HB 240**, establishing a committee to study ways to prevent suicide among young people in New Hampshire.

**HB 560**, relative to penalties for operating an aircraft while under the influence of alcohol or drugs, relative to fees related to aircraft, and making a technical correction.

**HB 564-FN**, relative to access to information in proceedings of the judicial conduct commission.

**HB 605-FN**, relative to prohibited election day activity and relative to electioneering by public employees.

**HB 617-FN**, relative to the licensure of dentists and regulation by the board of dental examiners.

**HB 690-FN**, relative to agricultural crop damage and relative to agricultural liming materials.

**HB 693-FN**, relative to the jurisdiction and constitution of the ballot law commission.

**HB 694-FN**, relative to tobacco product manufacturers not entering master settlement agreements and changing the tax on tobacco products other than cigarettes.

**HB 703-FN**, permitting free day-use admission to the state park system for disabled veterans.

**HB 763-FN**, requiring parental notification before abortions may be performed on unemancipated minors.

**HB 805**, establishing a consensus revenue estimating panel.

**HB 825**, establishing a committee to study methods of safely reducing the prison population in the state.

**May 30, 2003**  
**2003-1907-EBA**  
**04/01**

**Enrolled Bill Amendment to HB 533**

The Committee on Enrolled Bills to which was referred HB 533  
AN ACT relative to health carrier disclosure for medical child support  
enforcement.

Having considered the same, report the same with the following amend-  
ment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE**

**Explanation to Enrolled Bill Amendment to HB 533**

This enrolled bill amendment corrects a statutory reference.

**Enrolled Bill Amendment to HB 533**

Amend section 6 of the bill by replacing lines 1-2 with the following:  
6 Health Maintenance Organizations; Medicare Risk Contracts; Ref-  
erence Change. Amend RSA 420-B:8-1, II to read as follows:

Senator Eaton moved adoption.

**Adopted.**

**June 2, 2003**  
**2003-1938-EBA**  
**05/10**

**Enrolled Bill Amendment to HB 565-FN-A**

The Committee on Enrolled Bills to which was referred HB 565-FN-A  
AN ACT establishing a commission to implement the Hampton Beach  
master plan.

Having considered the same, report the same with the following amend-  
ment, and the recommendation that the bill as amended ought to pass.

**FOR THE COMMITTEE**

**Explanation to Enrolled Bill Amendment to HB 565-FN-A**

This enrolled bill amendment makes a technical correction.

**Enrolled Bill Amendment to HB 565-FN-A**

Amend the bill by replacing RSA 216-J:2, I as inserted by section 1 of  
the bill by replacing line 1 with the following:

I. The 9 members of the commission shall be as follows:

Senator Eaton moved adoption.

**Adopted.**

**June 2, 2003**  
**2003-1939-EBA**  
**06/10**

**Enrolled Bill Amendment to HB 578-FN-A**

The Committee on Enrolled Bills to which was referred HB 578-FN-A  
AN ACT establishing a program for self-certification by small quan-  
tity hazardous waste generators and making an appropri-  
ation therefor.

Having considered the same, report the same with the following amend-  
ment, and the recommendation that the bill as amended ought to pass.



## FOR THE COMMITTEE

**Explanation to Enrolled Bill Amendment to HB 578-FN-A**

This enrolled bill amendment corrects a statutory reference.

**Enrolled Bill Amendment to HB 578-FN-A**

Amend RSA 147-A:3, XXVIII as inserted by section 3 of the bill by replacing line 2 with the following:  
generators of hazardous waste specified in RSA 147-A:6-a.

Amend section 4 of the bill by replacing lines 2 and 3 with the following:  
after section 6 the following new section:

147-A:6-a Initial Notification Fee.

Amend RSA 147-B:6, I-g as inserted by section 5 of the bill by replacing line 1 with the following:

I-g. Fees collected pursuant to RSA 147-A:5, IV (c) and RSA 147-A:6-a shall be deposited in

Amend RSA 147-B:6, I-g as inserted by section 5 of the bill by replacing line 4 with the following:  
provide technical training and assistance to hazardous waste generators, hire personnel, and pay

Senator Eaton moved adoption.

**Adopted.**

**June 2, 2003**

**2003-1940-EBA**

**08/09**

**Enrolled Bill Amendment to HB 684-FN**

The Committee on Enrolled Bills to which was referred HB 684-FN  
AN ACT relative to the insurance rating law.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

## FOR THE COMMITTEE

**Explanation to Enrolled Bill Amendment to HB 684-FN**

This enrolled bill amendment corrects references and makes technical corrections.

**Enrolled Bill Amendment to HB 684-FN**

Amend RSA 412:3, II as inserted by section 1 of the bill by replacing line 3 with the following:  
insurers, and which assists insurers in ratemaking-related activities such as those enumerated in

Amend RSA 412:3, XXIV as inserted by section 1 of the bill by replacing line 2 with the following:  
premiums or exposures to the average date of writing, for the period during which the policies are to

Amend RSA 412:7, I as inserted by section 1 of the bill by replacing line 9 with the following:  
disclosure notice shall also include a policyholder's acknowledgment statement, to be signed and

Amend RSA 412:7, II as inserted by section 1 of the bill by replacing line 3 with the following:  
the requirements that the policyholder has met. This certification is to be completed annually and

Amend RSA 412:12 as inserted by section 1 of the bill by replacing line 2 with the following:  
examination as a prerequisite to issuance or delivery of any motor vehicle liability policy, the insurer

Amend RSA 412:15, II as inserted by section 1 of the bill by replacing lines 2 and 3 with the following:  
noncompetitive market under subparagraph I(b), the inadequacy standards under subparagraph I(c) and the unfair discrimination standard under subparagraph I(d), the following criteria shall apply:

Amend RSA 412:16, II as inserted by section 1 of the bill by replacing line 10 with the following:  
that does not pertain to the formulation of rates shall be identified by the filer as proprietary and shall

Amend RSA 412:19, V as inserted by section 1 of the bill by replacing line 3 with the following:  
rates for the insurer that are high enough to protect the interests of all parties and may order that a

Amend RSA 412:34, I as inserted by section 1 of the bill by replacing line 2 with the following:  
injured workers' return to work;

Amend RSA 412:34, II as inserted by section 1 of the bill by replacing it with the following:

II. No greater than plus or minus 25 percent of the insurer's base rates;  
Senator Eaton moved adoption.

**Adopted.**

**May 30, 2003**  
**2003-1915-EBA**  
**04/10**

#### **Enrolled Bill Amendment to HB 758-FN**

The Committee on Enrolled Bills to which was referred HB 758-FN  
AN ACT relative to the criteria for medicaid eligibility.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

#### **FOR THE COMMITTEE**

#### **Explanation to Enrolled Bill Amendment to HB 758-FN**

This enrolled bill amendment makes a grammatical correction.

#### **Enrolled Bill Amendment to HB 758-FN**

Amend line 2 of RSA 167:4, IV (b)(3) as inserted by section 1 of the bill by replacing it with the following:  
ensuring payment if the individual predeceases the duration of the annuity, in an amount equal to the  
Senator Eaton moved adoption.

**Adopted.**

**June 2, 2003**  
**2003-1932-EBA**  
**04/01**

#### **Enrolled Bill Amendment to HB 816**

The Committee on Enrolled Bills to which was referred HB 816  
AN ACT making technical corrections to the securities laws.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

**Explanation to Enrolled Bill Amendment to HB 816**

This enrolled bill amendment makes a technical correction to the bill.

**Enrolled Bill Amendment to HB 816**

Amend RSA 421-A:3 as inserted by section 17 of the bill by replacing line 2 with the following:  
soon as practicable on the date of commencement of the takeover bid [he] *the offeror* files with the

Senator Eaton moved adoption.

**Adopted.**

**REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

**HB 131**, relative to enforcement of negotiable instruments under Article 3 of the Uniform Commercial Code.

**HB 159**, relative to meetings of the directors of nondepository trust companies.

**HB 160**, relative to removal or replacement of trustees.

**HB 166**, relative to employees of the New Hampshire retirement system.

**HB 356-FN**, relative to including medical benefits costs in the purchase of creditable service in the retirement system.

**HB 404**, relative to common trust funds.

**HB 413-L**, relative to certain appeals proceedings when the taxpayer prevails.

**HB 446**, relative to building permits.

**HB 519-FN-A**, relative to the conservation number plate trust fund.

**HB 596-FN**, relative to health plan loss information.

**HB 659-FN**, relative to penalties for failure to obey a subpoena or summons.

**HB 711-FN**, relative to the regulation of retail installment sales of motor vehicles.

**HB 778-L**, relative to the city of Manchester school district.

**HB 806**, enabling municipalities to adopt a property tax exemption for deaf or severely hearing impaired persons.

**HB 807-FN**, increasing the filing fees for a fund raising counsel and a paid solicitor of a charitable trust.

**SB 142-FN**, relative to advertisements on utility poles and highway signs.

**SB 206-FN**, relative to the registration of OHRVs used as grooming equipment for cross country ski trails.

Senator D'Allesandro moved adoption.

**Adopted.**

**REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

**HB 164-FN-A**, increasing the gross premiums tax on insurance provided by certain unlicensed companies.

**HB 215**, relative to expungement of records contained in the DNA database.

**HB 225**, extending the task force on deafness and hearing loss and changing the task force's membership and duties.

**HB 320**, relative to permitting additional contributions in the city of Manchester employees contributory retirement system.

**HB 379**, relative to penalties for OHRV violations by underage operators.

**HB 434-L**, relative to junkyards and motor vehicle recycling yards.

**HB 639-FN-L**, relative to receiving legislative body approval through warrant articles before a municipality may continue a program initiated under a grant.

**HB 699-FN**, relative to abandoned vehicles.

**SB 32**, relative to municipal budget recommendations.

**SB 53**, establishing an advisory board to the labor commissioner and relative to the terms of the members of the compensation appeals board.

Senator D'Allesandro moved adoption.

**Adopted.**

**REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

**HB 343**, establishing a boundary commission to determine the boundary between New Hampshire and Maine.

**HB 477**, establishing certain speed limits.

**HB 529**, relative to the New Hampshire seed law.

**HB 770-FN-A**, establishing a committee to study using tax policy to create incentives to encourage employers to hire disabled persons.

**HB 808**, relative to proof of residency and resident tax payment for receiving resident fish and game licenses.

**SB 34**, relative to independent living retirement communities.

**SB 36-FN**, relative to protective custody of a person impaired by drugs and establishing a committee to study the issue of the applicability of the administrative license suspension laws to driving while under the influence of controlled drugs and ways to address the speed with which such cases are adjudicated in the district court.

**SB 79-FN-L**, relative to penalties for the exhibition of fighting animals.

Senator D'Allesandro moved adoption.

**Adopted.**

**REPORT OF COMMITTEE ON ENROLLED BILLS**

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

**HB 211**, relative to town clerk fee deposit requirements.

**HB 278**, relative to certain acts of sexual assault.

**HB 571**, relative to Old Newport Road and the end of Main Street in the town of Marlow.

**HB 593**, relative to solid waste facilities in small towns.

**HB 802**, encouraging the department of transportation to retrofit a highway rest stop to be a solar powered facility.

**HB 834**, relative to River Road and Nimble Hill Road in the town of Newington.

**SB 43**, relative to archives and records management.

**SB 82**, relative to awards of fees and interest under workers' compensation.

**SB 101**, relative to unemployment compensation.

**SJR 1**, approving certain uses of Weeks state park.

Senator D'Allesandro moved adoption.

**Adopted.**

#### LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

**Adopted.**

**Adjournment.**

*June 5, 2003*

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good Morning! Today you will take your first step in declaring your budgetary intentions for us. It is a first step, not a final one, for conversations will follow with the House and ultimately with the man down the hall. Please remember with each budgetary step you take this morning and in the weeks ahead, that what you decide for us will reverberate in places far, far away from here and in days long, long into our future. If you walk through the farms and pasture lands of Belgium and northwestern France today, you can still see etched into the landscape, nearly ninety years ago, both the scars and the glory lines of the long silent Western Front of the First World War. The warriors are long gone, but the imprint of their actions remains. So it is with decisions you make in this chamber, including and especially the decisions you make about money – your money, my money, and the money we need to share together.

*Gracious God, at once both frugal and extravagant: give us eyes that can take in the long view. We pray that the choices we make in these days will provide a tomorrow for the people entrusted to our care that is expansive, responsible, bold and marked with traces which bring us both gratitude and glory in the days ahead.*

*Amen.*

Senator Estabrook led the Pledge of Allegiance.

**INTRODUCTION OF GUESTS****HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 54-FN-L**, relative to the local inventory of property values for assessment of property taxes.

**SENATE NONCONCURS AND REQUESTS****A COMMITTEE OF CONFERENCE**

**SB 54-FN-L**, relative to the local inventory of property values for assessment of property taxes.

Senator Roberge moved to nonconcur and requests a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Boyce, Green, Below

**HOUSE MESSAGE**

The House of Representatives accedes to the request of the Senate for a Committee of Conference on the following entitled Bill:

**SB 54-FN-L**, relative to the local inventory of property values for assessment of property taxes.

and the Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Patten, Stohl, Twombly, Theberge

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 60-FN**, relative to voluntary certification of persons installing or servicing propane gas or heating oil equipment.

**SENATE NONCONCURS AND REQUESTS****A COMMITTEE OF CONFERENCE**

**SB 60-FN**, relative to voluntary certification of persons installing or servicing propane gas or heating oil equipment.

Senator Prescott moved to nonconcur and requests a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Clegg, Prescott, Cohen

**HOUSE MESSAGE**

The House of Representatives accedes to the request of the Senate for a Committee of Conference on the following entitled Bill:

**SB 60-FN**, relative to voluntary certification of persons installing or servicing propane gas or heating oil equipment.

and the Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** O'Neil, Dexter, Paul Laflamme, Dejoie

### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 87**, establishing a committee to study setback requirements for septage, biosolids, and short paper fibers, and extending the temporary use of septage, biosolids, and short paper fiber by certain persons.

### **SENATE NONCONCURS AND REQUESTS A COMMITTEE OF CONFERENCE**

**SB 87**, establishing a committee to study setback requirements for septage, biosolids, and short paper fibers, and extending the temporary use of septage, biosolids, and short paper fiber by certain persons.

Senator Johnson moved to nonconcur and requests a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Johnson, Barnes, Cohen

### **HOUSE MESSAGE**

The House of Representatives accedes to the request of the Senate for a Committee of Conference on the following entitled Bill:

**SB 87**, establishing a committee to study setback requirements for septage, biosolids, and short paper fibers, and extending the temporary use of septage, biosolids, and short paper fiber by certain persons.

and the Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Babson, Williams, Phinizy, Ahern

### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 120**, relative to testimony by video teleconference in criminal cases.

### **SENATE NONCONCURS AND REQUESTS A COMMITTEE OF CONFERENCE**

**SB 120**, relative to testimony by video teleconference in criminal cases.

Senator Peterson moved to nonconcur and requests a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Peterson, Clegg, Foster

**HOUSE MESSAGE**

The House of Representatives accedes to the request of the Senate for a Committee of Conference on the following entitled Bill:

**SB 120**, relative to testimony by video teleconference in criminal cases. and the Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Stevens, Nedeau, Tholl, Timothy Robertson

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 134**, relative to the regulation of real estate brokers by the real estate commission.

**SENATE NONCONCURS AND REQUESTS  
A COMMITTEE OF CONFERENCE**

**SB 134**, relative to the regulation of real estate brokers by the real estate commission.

Senator Roberge moved to nonconcur and requests a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Gallus, Roberge, Larsen

**HOUSE MESSAGE**

The House of Representatives accedes to the request of the Senate for a Committee of Conference on the following entitled Bill:

**SB 134**, relative to the regulation of real estate brokers by the real estate commission.

and the Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** O'Neil, Zolla, Paul Laflamme, Fitzgerald

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 154**, relative to landlord access to rental properties.

**SENATE NONCONCURS AND REQUESTS  
A COMMITTEE OF CONFERENCE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 154**, relative to landlord access to rental properties.

Senator Roberge moved to nonconcur and requests a Committee of Conference.

**Adopted.**



The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Sapareto, Roberge, Larsen

### **HOUSE MESSAGE**

The House of Representatives accedes to the request of the Senate for a Committee of Conference on the following entitled Bill:

**SB 154**, relative to landlord access to rental properties.

and the Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Craig, Woods, Lasky, Mock

### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 155**, establishing a commission to study issues relative to water withdrawals.

### **SENATE NONCONCURS AND REQUESTS A COMMITTEE OF CONFERENCE**

**SB 155**, establishing a commission to study issues relative to water withdrawals.

Senator Johnson moved to nonconcur and requests a Committee of Conference.

### **Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Johnson, Prescott, Below

### **HOUSE MESSAGE**

The House of Representatives accedes to the request of the Senate for a Committee of Conference on the following entitled Bill:

**SB 155**, establishing a committee to study the vesting of development rights.

and the Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Cooney, D.L. Chris Christensen, Charles Laflamme, Spang

### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 73**, establishing a committee to study establishing enterprise zones in economically deprived or challenged communities, and relative to the Black Brook Park Tax Increment Finance District.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 73**, establishing a committee to study establishing enterprise zones in economically deprived or challenged communities, and relative to the Black Brook Park Tax Increment Finance District.

Senator Odell moved to concur.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 113**, changing the name of Plymouth state college to Plymouth state university.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 113**, changing the name of Plymouth state college to Plymouth state university.

Senator Prescott moved to concur.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 119**, relative to medical and hospital liability insurance.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 119**, relative to medical and hospital liability insurance.

Senator Flanders moved to concur.

SENATOR LARSEN: Could we hear from someone on the committee what changes have occurred?

SENATOR FLANDERS: Basically this is the bill that I presented on the floor and when it went to the House, again, they all sat down, the medical people and they all got together and they changed a little bit of wording. It is another agreed upon bill. Everybody agreed that we should pass it as it is. That is why I concurred.

SENATOR LARSEN: Okay. Thank you.

SENATOR COHEN: Senator Flanders, I am sorry, I could not hear you. Is this a case that both sides were in agreement on this particular bill?

SENATOR FLANDERS: They went back and there were a couple of Representatives that had problems with the wording, so they sat back down again and went over the wording. They may have changed a word, but they were all in agreement. Before I signed off on it, I talked to both...**TAPE INAUDIBLE.**

SENATOR COHEN: Thank you.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 130-FN-L**, relative to county departments of corrections.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 130-FN-L**, relative to county departments of corrections.

Senator Prescott moved to concur.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 136**, relative to liability for hazardous materials accidents.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 136**, relative to liability for hazardous materials accidents.

Senator Johnson moved to concur.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 149-FN**, establishing criminal penalties for the use of a credit card scanning device or reencoder to defraud.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 149-FN**, establishing criminal penalties for the use of a credit card scanning device or reencoder to defraud.

Senator Peterson moved to concur.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 152**, relative to health insurance coverage for prosthetic devices.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 152**, relative to health insurance coverage for prosthetic devices.

Senator Flanders moved to concur.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 157**, establishing a committee to study the vesting of development rights.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 157**, establishing a committee to study the vesting of development rights.

Senator Prescott moved to concur.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 162**, establishing a committee to study water resources.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 162**, establishing a committee to study water resources.

Senator Johnson moved to concur.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 164**, relative to the unauthorized use of a financial institution's name.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 164**, relative to the unauthorized use of a financial institution's name.

Senator Flanders moved to concur.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

**SB 184**, relative to reinsurance.

**SENATE CONCURS WITH HOUSE AMENDMENT**

**SB 184**, relative to reinsurance.

Senator Flanders moved to concur.

**Adopted.**

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 198**, relative to the police powers of law enforcement officers called to respond to incidents in other jurisdictions.

and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Welch, Weare, Bicknell, Pantelakos

**SENATE ACCEDES TO HOUSE REQUEST FOR  
A COMMITTEE OF CONFERENCE**

**HB 198**, relative to the police powers of law enforcement officers called to respond to incidents in other jurisdictions.

Senator Peterson moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Roberge, Peterson, Foster

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 287**, establishing a professional malpractice claims study commission. and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Mock, Craig, Batula, MacKay

**SENATE ACCEDES TO HOUSE REQUEST FOR  
A COMMITTEE OF CONFERENCE**

**HB 287**, establishing a professional malpractice claims study commission. Senator Flanders moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Prescott, Martel, Cohen

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 288-FN**, imposing a criminal penalty for the dissemination of certain materials without consent.

and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Knowles, Tholl, Stevens, Kurk.

**SENATE ACCEDES TO HOUSE REQUEST FOR  
A COMMITTEE OF CONFERENCE**

**HB 288-FN**, imposing a criminal penalty for the dissemination of certain materials without consent.

Senator Peterson moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Clegg, Sapareto, Foster

### **HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 316-FN**, relative to insurance coverage for anesthesia for child dental care.

and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Hunt, Fraser, Quandt, Meader

### **SENATE ACCEDES TO HOUSE REQUEST FOR A COMMITTEE OF CONFERENCE**

**HB 316-FN**, relative to insurance coverage for anesthesia for child dental care.

Senator Flanders moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Flanders, Martel, Cohen

### **HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 387-FN**, allowing free admission to the state park system for certain members of the New Hampshire national guard.

and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Coughlin, Peter Sullivan, Headd, Easson

### **SENATE ACCEDES TO HOUSE REQUEST FOR A COMMITTEE OF CONFERENCE**

**HB 387-FN**, allowing free admission to the state park system for certain members of the New Hampshire national guard.

Senator Gallus moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Kenney, Morse, Below

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 543**, relative to increasing the membership of the board of accountancy and relative to appeals of board decisions.

and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Bergin, Goulet, Hamel, DeJoie

**SENATE ACCEDES TO HOUSE REQUEST FOR  
A COMMITTEE OF CONFERENCE**

**HB 543**, relative to increasing the membership of the board of accountancy and relative to appeals of board decisions.

Senator Prescott moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Prescott, Kenney, Estabrook

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 590-FN**, relative to highway fund budget reporting requirements. and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Leber, Candace Bouchard, Graham, Weyler

**SENATE ACCEDES TO HOUSE REQUEST FOR  
A COMMITTEE OF CONFERENCE**

**HB 590-FN**, relative to highway fund budget reporting requirements. Senator D'Allesandro moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** D'Allesandro, Clegg, Gallus

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 654-FN**, relative to criminal liability for the destruction or disconnection of a smoke detector by a tenant in a rental dwelling.

and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Weare, Bicknell, Welch, Pantelakos

**SENATE ACCEDES TO HOUSE REQUEST FOR  
A COMMITTEE OF CONFERENCE**

**HB 654-FN**, relative to criminal liability for the destruction or disconnection of a smoke detector by a tenant in a rental dwelling.

Senator Roberge moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Roberge, Barnes, Larsen

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 670-FN**, establishing a procedure for release by a state agency of statistical information for research purposes.

and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** O'Neil, Hunt, Batula, Schulze

**SENATE ACCEDES TO HOUSE REQUEST FOR  
A COMMITTEE OF CONFERENCE**

**HB 670-FN**, establishing a procedure for release by a state agency of statistical information for research purposes.

Senator Boyce moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Boyce, O'Hearn, Larsen

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 680-FN**, establishing a committee to study service contracts and repealing the law regarding legal services insurance.

and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Hunt, Fraser, Spiess, Meader



**SENATE ACCEDES TO HOUSE REQUEST FOR  
A COMMITTEE OF CONFERENCE**

**HB 680-FN**, establishing a committee to study service contracts and repealing the law regarding legal services insurance.

Senator Peterson moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Clegg, Foster, Roberge

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 718-FN**, relative to endangering the welfare of a minor and relative to criminal responsibility for the commission of certain acts.

and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Knowles, Tholl, Stevens, Bicknell

**SENATE ACCEDES TO HOUSE REQUEST FOR  
A COMMITTEE OF CONFERENCE**

**HB 718-FN**, relative to endangering the welfare of a minor and relative to criminal responsibility for the commission of certain acts.

Senator Peterson moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Peterson, Roberge, Foster

**HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 798**, relative to gifts by fiduciaries.

and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Hunt, Stepanek, Quandt, Meader

**SENATE ACCEDES TO HOUSE REQUEST FOR  
A COMMITTEE OF CONFERENCE**

**HB 798**, relative to gifts by fiduciaries.

Senator Flanders moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Flanders, Barnes, D'Allesandro

### **HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 817**, relative to the regulation of first and second mortgage brokers and mortgage servicers.

and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Hunt, Fraser, Stepanek, Meader

### **SENATE ACCEDES TO HOUSE REQUEST FOR A COMMITTEE OF CONFERENCE**

**HB 817**, relative to the regulation of first and second mortgage brokers and mortgage servicers.

Senator Flanders moved to accede to the request for a Committee of Conference.

**Adopted.**

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

**SENATORS:** Flanders, Barnes, Foster

### **HOUSE MESSAGE**

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from Senate:

**HB 524-FN**, relative to the annulment of certain domestic violence offenses.

and requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

**REPRESENTATIVES:** Knowles, Nedean, Stevens, Tholl

### **SENATE REFUSES TO ACCEDE TO HOUSE REQUEST**

**HB 524-FN**, relative to the annulment of certain domestic violence offenses.

Senator Peterson moved to refuse to accede to the request for a Committee of Conference.

**Adopted.**

### **COMMITTEE REPORTS**

**HB 773**, establishing a committee to study a tuition tax credit program. Ways and Means Committee. Ought to pass with amendment, Vote 5-0. Senator D'Allesandro for the committee.

**Senate Ways and Means****May 29, 2003****2003-1870s****10/03****Amendment to HB 773**

Amend paragraph I of section 2 of the bill by replacing it with the following:

I. The members of the committee shall be 4 members of the house of representatives, appointed by the speaker of the house.

Amend the bill by replacing sections 4 and 5 with the following:

4 Chairperson. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named member. The first meeting of the committee shall be held within 45 days of the effective date of this section.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the house clerk, the governor, and the state library on or before November 1, 2003.

SENATOR D'ALLESANDRO: Thank you Mr. President. I move ought to pass with amendment on HB 773. This bill establishes a committee to study a tuition tax credit program and the financial impact of granting a credit against state taxes for tuition for qualified scholarship programs. The committee removed the Senate membership and increased the House membership to five members and unanimously recommends ought to pass with amendment. Thank you Mr. President.

**Amendment adopted.**

Senator Peterson offered a floor amendment.

Sen. Gallus, Dist. 1  
Sen. Johnson, Dist. 2  
Sen. Kenney, Dist. 3  
Sen. Below, Dist. 5  
Sen. Green, Dist. 6  
Sen. Flanders, Dist. 7  
Sen. Odell, Dist. 8  
Sen. Roberge, Dist. 9  
Sen. Eaton, Dist. 10  
Sen. Peterson, Dist. 11  
Sen. O'Hearn, Dist. 12  
Sen. Foster, Dist. 13  
Sen. Clegg, Dist. 14  
Sen. Gatsas, Dist. 16  
Sen. Barnes, Dist. 17  
Sen. Martel, Dist. 18  
Sen. Sapareto, Dist. 19  
Sen. D'Allesandro, Dist. 20  
Sen. Estabrook, Dist. 21  
Sen. Morse, Dist. 22  
Sen. Prescott, Dist. 23

**June 4, 2003****2003-1995s****03/10****Floor Amendment to HB 773**

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study a tuition tax credit program and establishing land and community heritage investment program number plates.

Amend the bill by replacing all after section 5 with the following:

6 New Subdivision; Land and Community Heritage Investment Program Number Plates. Amend RSA 261 by inserting after section 97-f the following new subdivision:

Land and Community Heritage Investment Program Number Plates  
261:97-g Land and Community Heritage Investment Program Number Plates.

I. The director is hereby authorized to issue special land and community heritage investment program number plates, in lieu of other number plates. The commissioner shall determine the design of these special plates. The plates shall retain the "live free or die" logo.

II. Such plates shall be issued only upon application and upon payment of a fee established in this paragraph that shall be in addition to the regular motor vehicle registration fee and any other number plate fees otherwise required. The fee shall be based on the registration number represented on the plate as follows: for plates with numbers from 1 to 9—\$5,000; for plates with numbers from 10 to 99—\$2,500; for plates with numbers from 100 to 999—\$1,000; for plates with numbers from 1,000 to 9,999—\$500; for plates with numbers 10,000 and higher—\$100.

III. Plates shall be renewed on an annual basis for the fee established in paragraph II. Of this sum, the department shall retain an amount as is necessary to recover production and administrative costs as approved by the fiscal committee of the general court. The remaining funds shall be paid to the state treasurer and deposited in the trust fund for the New Hampshire land and community heritage investment program established in RSA 227-M:7. The cost of replacement number plates shall be identical to the cost of initial number plates and the revenue from replacement number plates shall be distributed in the same manner as revenue derived from initial number plates.

IV. Plates may be used on passenger motor vehicles and recreation vehicles.

7 Effective Date.

I. Section 6 of this act shall take effect July 1, 2003.

II. The remainder of this act shall take effect upon its passage.

**2003-1995s**

#### AMENDED ANALYSIS

This bill:

I. Establishes a committee to study a tuition tax credit program.

II. Establishes special land and community heritage investment program number plates.

SENATOR PETERSON: Thank you Mr. President. If it is appropriate at this time, I would like to bring forward a floor amendment. I would like to express my appreciation to some twenty Senators who co-sponsored this amendment, which is now being passed out, to create in New Hampshire, an LCHIP license plate which would establish a dedicated source of funding for the LCHIP program and ensure that it is adequately funded now and in the future. This is a bill that I have been thinking about over the last few weeks since we have dealt with the budget, and realized that this important program which provides the opportunity for communities across the state to preserve important assets, community assets, such as

buildings and areas of open space which we all enjoy in which indeed define the character of our state, is a program that really should be out of the budget process if at all possible, Mr. President. Because in the push and pull of the budget process, we find that we must compare things that we like to do with things that we must do, and it really is not appropriate to have this program each year, fighting for its funding versus vital services such as human services aid and public safety considerations and the like. So what I was looking for was a way to establish a dedicated fund, have it be sustainable, and have people who want to participate in this, be able to do so in a great way, and also receive some recognition for having done so. The idea before you combine all of these components in a simple, expedient way, which would be a license plate, akin to the one that many of you have seen which says "preserve New Hampshire" on the top and it shows a beautiful vision of the White Mountain range, the Presidentials, and "Live Free or Die" on the bottom. I think that this would be a program that will catch on. It will create a significant amount of money for this program and probably in excess of the \$6 million a year that many had hoped to achieve a sustained funding, and I very much appreciate the willingness of the Senate to move forward and make this statement that LCHIP is important to us and we would like to set up a program that will indeed sustain its funding into the future. I thank my colleagues for their support and urge adoption of this amendment. Thank you.

SENATOR SAPARETO: Thank you Mr. President. I think that a bill like this is long overdue. The LCHIP program is certainly worthwhile and it certainly has proved its worth in my communities last year when a large tract of land which would have been developed by housing units, was preserved. Of course there are other projects that are in many communities throughout the state that will affect us. The lack of a dedicated funding source for LCHIP has been a lot of the reason why it is going to come up every two years as either a negotiating tool or something where we can cut money out because it doesn't involve Health and Human Services or certain other life threatening budgets. So I strongly urge this body to support the LCHIP dedicated fund. I am very pleased to see so many of the...my colleagues here on this bill. I think that this is a wonderful thing for New Hampshire. I hope that we are able to pass this easily. Thank you.

SENATOR LARSEN: Senator Peterson, I applaud you for the creative idea and I know that your efforts are in the best interest for the LCHIP program. I have a question on when do you expect these plates to be ready? What revenue do you expect in the first few years of operation, and how many in your estimate, how many licenses do you expect will be sold in order to reach, what you said, was in excess of six million a year? At what point will the state reach that \$6 million sale and how will it be a sustainable revenue for LCHIP?

SENATOR PETERSON: Thank you Senator, for the question. I appreciate your comments on this. The establishment of a new license plate of course, has to go through a process through the Department of Safety. It will probably take about a year. That is what they usually take in order to get up and running. This is a recommendation for a format and they will of course, by rule, have to establish the actual policies relating to this plate. Passage of this amendment to this bill, does not affect the monies that are now in the budget, which of course differ from the House and the Senate, for the LCHIP program, and it would be available at

whatever level that we agree upon to fund the program in the first year. The answer to the second question is how much would this raise? The answer is, if you were to sell the first 10,000 plates at the increased additional donations that are included in this bill or the increased contributions that are obtained to the lower number plate, and then you were able to sell 20,000 more plates at the \$100 level, you would be in excess of \$7.5 million a year. If you sold 20,000 total, you would be in excess of \$6.5 million per year, the way that this bill is laid out. Another interesting suggestion that has been made is that we may set a level to have your vanity plate monogrammed, or whatever it is, put onto this plate and have an amount that would be charged for that. That might also be considered if this bill...of course, would move forward here to the House. There would be conferences and abilities and a trailer bill to deal with some technical corrections, but all-in-all, I think that it is very reasonable to assume that this will catch on. I know that showing it to my two daughters, who drive, last night they both wanted one and a number of the people that I have gone by in the building here, have wanted to know where they could get onto the list. I have a feeling that the people who are deeply involved in conservation would like to fly that flag. I have got to tell you that if we can see that on cars going by, and we begin to associate it with projects that are really important to our communities, there will be a building, I think, and amplification of this, which could result in much higher proceeds that we are conservatively expecting at this time.

SENATOR LARSEN: So your daughters are pushing on the number plates from one to nine at \$5,000 a year?

SENATOR PETERSON: My daughters want the car first.

SENATOR MARTEL: Thank you Mr. President. I rise to speak very briefly. I rise to voice my support for this bill because LCHIP is very, very important to the city of Manchester, but also in the town of Litchfield where land preservation of farms that have extended back into the 1800's. There is the Colby Farm, the McQueseaten Farm, the Desroscher Farms, among many, who received funding from the LCHIP program to preserve them. They are historic and they deserve to be preserved. They also have the town hall in Litchfield which is also on that list. I urge my fellow Senators to please support the LCHIP program. I thank you very much for your time.

SENATOR BOYCE: First, I suppose that somebody should point out that this is a non-germane amendment. It has zero public hearings, and should require a suspension of the rules; however, noticing that more than the required number of Senators have signed onto this last minute, and I think have not fully thought out the plan, has signed on as sponsors. It would probably get the required two-thirds...so I will forget that. This is...I don't know that this is a good plan or a bad plan on its merits as a funding method, but as I always disagree with dedicated funds that are off the budget, and put money into programs that will have zero control by the legislature, which will affect forever, how this state is constituted, and seeing that if they sold the first 10,000 of these plates, that they would be putting \$10 million dollars a year into the LCHIP program and would take how much developable land off of the market and would raise the price of other properties in the state by how much? I think that what we would be doing is we would be taking the price of land in this state and driving it even further through the roof. The people who complain about no affordable housing should be opposed to this on that, because this will

be taking land away from the use to house people. Every time that you take land away from being developed, what you do is you make it more expensive to build the next house to be built. The next apartment building that gets built. Everything that is based on real estate will go up because of this. Peoples property taxes will go up because of this, because the value of their house will go up because of this. Every time that we take property out of the private hands and tie it up so that it can not be developed and cannot be used for its fullest purpose, you are driving the cost of other real estate up. So I am opposed to this on several grounds, and I am not going to ask you to suspend the rules. Thank you.

SENATOR COHEN: Thank you Senator Peterson. I would hope that the simple majority in this body would agree that LCHIP is very much in New Hampshire's best interest. It adds value tremendously to the state of New Hampshire. It is in our economic interest, I believe. My question is, aside from your very generous daughters, have you done any kind of market analysis of...I don't know if you have had any time to do that. Will people spend that kind of money? That is substantial checks to be putting out each year.

SENATOR PETERSON: I understand that the vanity plates and **TAPE INAUDIBLE** several thousand dollars in order to get one at all. It is an interesting side fact, but I will tell you that I had intended to bring this bill and to bring it to a full process next year. It was in response to the action of the Fiscal Committee that I brought it forward as an idea, as a way to continue sustaining funding for LCHIP, and with a concern that that is a very important imperative for us to preserve, without scuttling the rest of the good work that has been done by the Fiscal Committee, for which I greatly applaud.

SENATOR COHEN: My question is still, has there been any kind of market analysis that people are willing to spend these kinds of dollars for this stuff?

SENATOR PETERSON: The simple two letter answer, no.

SENATOR COHEN: Thank you.

SENATOR BOYCE: Do you think that there will be lots of people willing to pay lots of money for these plates? Why don't you then have an open and public auction, that you publicly auction off these lower numbered plates? Because as you said, people in England will pay a lot of money. Now I understand that in England, that money doesn't actually flow to the government, it flows to the person who happened to buy that plate first. And you know, wouldn't it be better to have any of those funds go to the program. Wouldn't you rather have the money going to the program instead of going to the person who happened to have bought that number one plate, and then make arrangements to sell the car and the plate and keep their title? It still could be title to them, but the person gets to drive it for \$2 million a year or something. Wouldn't you rather have it go to the state than to some private party?

SENATOR PETERSON: This is not an investment scheme for individuals, Senator Boyce. It is an investment program to preserve our community heritage and land of significant value to surrounding properties. I, having been actively engaged in real estate and owning a company for some twenty years now, in the Monadnock region of New Hampshire, I have sympathy for the arguments that you made previously about limiting the amount of land that is available for our children's children to build upon and to use as they wish. But I believe that these imperatives

exist in a balance. We have certain parcels of land that are indeed of great significance and would change the environment in which we all enjoy, if they were to be developed. We have certain community assets in Village Centers, such as theatres, opera houses, parks and the like, which are very important to the value of what we all enjoy in our lived experience in this state. This program has a board that checks these projects very carefully. As a result, they, I think, have benefits for us all. We need to step up and support this today. Thank you.

SENATOR BELOW: Thank you Mr. President. I rise in support of the floor amendment. I certainly think that it is worth a shot. If we can get some folks to pay on their vanity to put in some more money for LCHIP, great. Actually, I like Senator Boyce's idea of auctioning or trading some sort of online auction for these numbers might, particularly, the very lowest, might bring in some more money, but there is an obvious problem with...we already have low digit plates. Numbers one through nine are already issued. Ten through ninety-nine are already issued, so there is a differentiation which may reduce the value. So I wonder if we shouldn't be auctioning off the current low digit plates and put it into LCHIP. That being said, I do, as an original sponsor of LCHIP legislation, I think that it is important to remember that LCHIP was originally conceived of, and enacted as a public/private partnership. The public portion was going to come from some dedicated revenue sources and some general funds. A recognition that a state as a whole was going to make an investment in conserving our very special open spaces and our very special historical and cultural heritage assets. In effect, that is how the program has worked. The \$15 million that has been put in from the public coffers has reached some \$60 million in private and local contributions. We are already getting a 1 to 4 match, not even counting the \$20 million additional money that went into that Connecticut River Headwaters Project. So I think that we need to be honest and recognize that this is a good way to supplement. I think that it's a public commitment to LCHIP, but I personally do not believe that it is a replacement for an ongoing public investment in the LCHIP program. Thank you Mr. President.

SENATOR LARSEN: I would share Senator Below's concerns that this amendment in fact, could be considered perhaps a supplement to the LCHIP program. I have real sincere concerns as I sit on the LCHIP Board with Senator Johnson. Concerns on the sustainability and the kind of how long it takes to ramp up to the dollar amounts necessary to preserve what we have seen LCHIP is able to preserve. Those special places in New Hampshire that will, over time, if we continue this program, through public participating, will be able to preserve those kinds of places like the historic structures that we have been able to preserve throughout many of your communities. Right here in Concord, we preserved an apple orchard which was under development efforts. That had been a public place where people were able to go and pick apples and see a view all the way up to the White Mountains. It is a gorgeous spot. Through the raising of private funds, through a local match, and then through the state match, we preserved those funds. It is in fact, a public...its a partnership both with the state, private investors, and the feds. So often times we have overlooked that and said, let the people who want it, pay for it, but I don't believe that the state needs to continue its partnership in the program. I am concerned that we are not making that investment. I also have concerns. We have sold 28,000 moose plates in the last three years. Almost three years. We have raised \$710,000.



It has taken a lot of effort. And as you might recall from the moose plates, what will happen to the moose plates that we took so long to see printed? Those moose plates have one six sharing with the Wildflower Program of DOT historic resources. The moose plates help to support our park structures, our non game wildlife and our state conservation district. If we sell these, which are beautiful proposal for plates, will those moose plates and the sharing that was an agreed upon version, a few years ago, will that go away? I have a real grave concern that this is a supplement perhaps that will build up over time, and I think a very laudable idea, but we still need to recognize that the state's investment will protect New Hampshire from becoming what we know when we visit the states to our south, is the vast suburbanization of America. We need to watch for that because I think that everyone in this room, and everyone in this state, recognizes how special New Hampshire is on the east coast, but we are under tremendous development threats and we need to balance the needs of our housing, the needs of our protected spaces and the needs of sustainable balance between those concerns. LCHIP balances that. I urge you to consider that as I will be bringing another amendment to HB 2, discussing LCHIP. Thank you.

**Question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Sapareto.**

**Seconded by Senator Green.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Below, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Estabrook, Morse, Prescott, Cohen.**

**The following Senators voted No: Boyce.**

**Yeas: 22 - Nays: 1**

**Floor amendment adopted.**

**Question is on the adoption of the bill as amended.**

**Adopted.**

### **SUSPENSION OF THE RULES**

Senator Clegg moved that the rules of the Senate be so far suspended and that **HB 773** be by this motion, ordered to third reading in the early session and passed at this time.

**Adopted by the necessary 2/3 vote.**

**HB 1-A**, making appropriations for the expenses of certain departments of the state for fiscal years ending June 30, 2004, and June 30, 2005. Finance Committee. Ought to pass with amendment, Vote 7-1. Senator Green for the committee.

HB 0001	PAGE 1	06/03/03	----- FISCAL YEAR 2004 -----	----- FISCAL YEAR 2005 -----
1.00 APPROPRIATIONS: THE SUMS HEREINAFTER DETAILED IN THIS ACT ARE HEREBY APPROPRIATED TO BE PAID OUT OF THE TREASURY OF THE STATE FOR THE PURPOSE SPECIFIED FOR THE BRANCHES AND DEPARTMENTS NAMED FOR THE FISCAL YEARS ENDING JUNE 30, 2004 AND JUNE 30, 2005				
01 GENERAL GOVERNMENT				
02 LEGISLATIVE BRANCH				
01 GENERAL COURT				
01 SENATE				
11 PERSONAL SERVICES - MEMBERS		400	6,129	
12 PERSONAL SERVICES-PERMANENT		803,449	831,137	
13 PERSONAL SERVICES-NON-PERMANENT		111,395	111,395	
20 CURRENT EXPENSES		71,250	71,250	
30 EQUIPMENT NEW/REPLACEMENT		4,750	4,750	
46 CONSULTANTS		41,000	50,000	
60 TRAVEL		252,327	264,066	
70 IN-STATE TRAVEL		75,000	75,000	
80 OUT-OF-STATE TRAVEL		23,750	23,750	
91 CONTINUING EDUCATION		5,700	5,700	
92 PRESIDENT'S DISCRETIONARY FUND		4,750	4,750	
* THE PRESIDENT OF THE SENATE SHALL DESIGNATE THOSE PERMANENT EMPLOYEES THAT SHALL NOT RECEIVE MILEAGE AS PROVIDED BY RSA 14:10.				
TOTAL		1,393,771	1,447,927	
SENATE				
GENERAL FUND		1,393,771	1,447,927	
TOTAL		1,393,771	1,447,927	
NOTWITHSTANDING ANY OTHER PROVISION OF LAW, PERMANENT EMPLOYEES AS APPROVED BY THE LEGISLATIVE FACILITIES COMMITTEE SHALL BE ELIGIBLE FOR FRINGE BENEFITS AS PROVIDED FOR CASUAL EMPLOYEES INCLUDING MEDICAL AND LIFE INSURANCE SYSTEM; MEDICAL DENTAL AND LIFE INSURANCE COVERAGE; ANNUAL SICK AND BONUS LEAVE; AND ANY OTHER BENEFITS THAT MAY BE GRANTED.				
FUNDS APPROPRIATED TO THE SENATE SHALL NOT LAPSE AT JUNE 30, 2003, JUNE 30, 2004, OR JUNE 30, 2005.				

HB 0001 PAGE 2 06/03/03		----- FISCAL YEAR 2004 ----- FISCAL YEAR 2005 -----	
01 GENERAL GOVERNMENT			
02 LEGISLATIVE BRANCH			
01 GENERAL COURT			
02 HOUSE			
11 PERSONAL SERVICES - MEMBERS			82,929
12 PERSONAL SERVICES-PERMANENT	2,000		1,167,877
13 PERSONAL SERVICES-NON-PERMANENT	1,165,344		284,999
20 CURRENT EXPENSES	280,704		141,750
30 EQUIPMENT NEW/REPLACEMENT	141,750		9,800
46 CONSULTANTS	4,300		1,800
60 BENEFITS	1,800		364,115
70 IN-STATE TRAVEL	321,656		700,000
80 OUT-OF STATE TRAVEL	675,000		60,000
90 CONTINUING EDUCATION	40,000		4,000
91 SPEAKERS SPECIAL ACCOUNT	4,000		4,500
92 MAJ. LEADER'S SPECIAL ACCOUNT	4,500		3,750
93 MIN. LEADER'S SPECIAL ACCOUNT	3,750		1,750
95 PRINTING & BINDING	1,750		85,000
96 CONTINGENCY	85,000		50,000
97 REPAIRS & ALTERATIONS	50,000		
	1		
* THE SPEAKER OF THE HOUSE SHALL DESIGNATE			
THOSE PERMANENT EMPLOYEES THAT SHALL NOT			
RECEIVE MILEAGE AS PROVIDED BY RSA 14:18.			
** FUNDS APPROPRIATED SHALL BE NON-LAPSING.			
TOTAL	2,763,455		2,918,770
HOUSE			
GENERAL FUND	2,763,455		2,918,770
TOTAL	2,763,455		2,918,770

NOTWITHSTANDING ANY OTHER PROVISIONS OF THE LAW, PERMANENT EMPLOYEES AS DESIGNATED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL BE ELIGIBLE FOR FRINGE BENEFITS AS PROVIDED FOR CLASSIFIED EMPLOYEES INCLUDING MEMBERSHIP IN THE RETIREMENT SYSTEM; MEDICAL, DENTAL AND LIFE INSURANCE COVERAGE; ANNUAL, SICK AND BONUS LEAVE; AND ANY OTHER BENEFITS THAT MAY BE GRANTED.

FUNDS APPROPRIATED TO THE HOUSE SHALL NOT LAPSE AT JUNE 30, 2003, JUNE 30, 2004, OR

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(CONT.)  
(CONT.)  
(CONT.)  
(CONT.)

01 GENERAL GOVERNMENT  
02 LEGISLATIVE BRANCH  
01 GENERAL COURT  
02 HOUSE

JUNE 30, 2005.

01 GENERAL GOVERNMENT  
02 LEGISLATIVE BRANCH  
01 GENERAL COURT  
03 GENERAL COURT JOINT EXPENSES  
01 MAINTENANCE/OTHER

10 PERSONAL SERVICES - PERMANENT	175,553	178,087
20 CURRENT EXPENSES	138,800	138,800
30 EQUIPMENT NEW/REPLACEMENT	4,000	4,000
46 CONSULTANTS	8,000	8,000
60 BENEFITS	65,950	67,673
91 DATA PROCESSING NEEDS	100,000	100,000
92 SPECIAL PROJECTS	2,000	2,000
93 NEWSPAPERS AND PUBLICATIONS	2	2
94 MEALS AND ALTERATIONS	175,000	175,000
95 PRINTING & BINDING	5,000	5,000
96 DUES-CONF OF INSURANCE LEGIS	5,000	8,000
98 JOINT ORIENTATION		

\* NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW,  
PERMANENT EMPLOYEES AS APPROVED BY THE LEGIS-  
LATIVE FACILITIES COMMITTEE SHALL BE ELIGIBLE  
FOR FRINGE BENEFITS AS PROVIDED FOR CLASSIFIED  
EMPLOYEES INCLUDING MEMBERSHIP IN THE RETIRE-  
MENT SYSTEM; MEDICAL, DENTAL AND LIFE INSURANCE  
COVERAGE; ANNUAL, SICK AND BONUS LEAVE; AND ANY  
OTHER BENEFITS THAT MAY BE GRANTED.

TOTAL	679,805	686,562
ESTIMATED SOURCE OF FUNDS FOR		
MAINTENANCE/OTHER		
01 TRANSFERS FROM OTHER AGENCIES	5,000	5,000
03 REVOLVING FUNDS	40,000	40,000
GENERAL FUND	634,805	641,562
TOTAL	679,805	686,562

HB 0001 PAGE 4 06/03/03		----- FISCAL YEAR 2004 -----	----- FISCAL YEAR 2005 -----
01 GENERAL GOVERNMENT			
02 LEGISLATIVE BRANCH			
01 GENERAL COURT			
03 GENERAL COURT JOINT EXPENSES			
02 VISITOR'S CENTER			
10 PERSONAL SERVICES - PERMANENT		101,705	104,841
20 CURRENT EXPENSES		2,400	2,400
30 EQUIPMENT NEW/REPLACEMENT		200	200
60 BENEFITS		38,648	39,840
90 STORE DISPLAY EXPENSES		500	500
91 PROFESSIONAL EDUCATION		600	600
92 SOUVENIR PURCHASES		25,000	25,000
* NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, PERMANENT EMPLOYEES AS APPROVED BY THE LEGISLATIVE FACILITIES COMMITTEE SHALL BE ELIGIBLE FOR FRINGE BENEFITS AS PROVIDED FOR CLASSIFIED EMPLOYEES INCLUDING MEMBERSHIP IN THE RETIREMENT SYSTEM; MEDICAL, DENTAL AND LIFE INSURANCE COVERAGE; ANNUAL, SICK AND BONUS LEAVE; AND ANY OTHER BENEFITS THAT MAY BE GRANTED.			
TOTAL		169,053	173,381
ESTIMATED SOURCE OF FUNDS FOR			
VISITOR'S CENTER			
06 AGENCY INCOME		30,316	30,316
GENERAL FUND		138,737	143,065
TOTAL		169,053	173,381
01 GENERAL GOVERNMENT			
02 LEGISLATIVE BRANCH			
01 GENERAL COURT			
03 GENERAL COURT JOINT EXPENSES			
03 LEGISLATIVE ACCOUNTING			
10 PERSONAL SERVICES - PERMANENT		111,046	115,620
20 CURRENT EXPENSES		2,550	2,550
50 PERSONAL SERVICE-TEMP/APPOINTEE		42,750	45,000
60 BENEFITS		500	44,513
90 OTHER EXPENDITURES		500	500
91 CONTINUING PROFESS EDUCATION		1,800	1,800
* NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, PERMANENT EMPLOYEES AS APPROVED BY THE LEGISLATIVE FACILITIES COMMITTEE SHALL BE ELIGIBLE FOR FRINGE BENEFITS AS PROVIDED FOR CLASSIFIED EMPLOYEES INCLUDING MEMBERSHIP IN THE RETIREMENT SYSTEM; MEDICAL, DENTAL AND LIFE INSURANCE COVERAGE; ANNUAL, SICK AND BONUS LEAVE; AND ANY			

HB 0001		PAGE	5	06/03/03	----- FISCAL YEAR 2004 -----		----- FISCAL YEAR 2005 -----	
01 GENERAL GOVERNMENT					(CONT.)			
02 LEGISLATIVE BRANCH					(CONT.)			
03 GENERAL COURT					(CONT.)			
03 GENERAL COURT JOINT EXPENSES					(CONT.)			
03 LEGISLATIVE ACCOUNTING					(CONT.)			
OTHER BENEFITS THAT MAY BE GRANTED.								
TOTAL					163,649	169,983		
ESTIMATED SOURCE OF FUNDS FOR								
LEGISLATIVE ACCOUNTING								
GENERAL FUND					163,649	169,983		
TOTAL					163,649	169,983		
THE OFFICE AND FUNCTIONS OF LEGISLATIVE								
ACCOUNTING SHALL BE UNDER THE JURISDICTION								
OF THE JOINT COMMITTEE ON LEGISLATIVE								
FACILITIES.								
01 GENERAL GOVERNMENT								
02 LEGISLATIVE BRANCH								
01 GENERAL COURT								
03 GENERAL COURT JOINT EXPENSES								
04 GENERAL COURT INFORMATION SYS								
10 PERSONAL SERVICES - PERMANENT					406,287	418,781		
20 CURRENT EXPENSES					23,000	23,000		
30 EQUIPMENT NEW/REPLACEMENT					1,000	1,000		
46 CONSULTANTS					7,500	7,500		
60 BENEFITS					120,000	120,000		
70 IN-STATE TRAVEL					150	150		
80 OUT-OF STATE TRAVEL					1,000	1,000		
91 COMPUTER SYSTEM EXPENDITURES					105,000	105,000		
92 CONTINUING PROFESS EDUCATION					6,000	6,000		
* NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW,								
PERMANENT EMPLOYEES AS APPROVED BY THE LEGIS-								
LATIVE FACILITIES COMMITTEE SHALL BE ELIGIBLE								
FOR FRINGE BENEFITS AS PROVIDED FOR CLASSIFIED								
EMPLOYEES INCLUDING MEMBERSHIP IN THE RETIRE-								
MENT SYSTEM; MEDICAL, DENTAL AND LIFE INSURANCE								
COVERAGE; ANNUAL, SICK AND BONUS LEAVE; AND ANY								
OTHER BENEFITS THAT MAY BE GRANTED.								
TOTAL					669,937	682,431		
ESTIMATED SOURCE OF FUNDS FOR								
GENERAL COURT INFORMATION SYS								
GENERAL FUND					669,937	682,431		
TOTAL					669,937	682,431		



01 GENERAL GOVERNMENT (CONT.)  
02 LEGISLATIVE BRANCH (CONT.)  
03 GENERAL COURT (CONT.)  
06 HEALTH SERVICES (CONT.)

TOTAL 54,689 55,226

THE OFFICE AND FUNCTIONS OF HEALTH SERVICES SHALL BE UNDER THE JURISDICTION OF THE JOINT COMMITTEE ON LEGISLATIVE FACILITIES.

FUNDS APPROPRIATED TO GENERAL COURT JOINT EXPENSES SHALL NOT LAPSE AT JUNE 30, 2003, JUNE 30, 2004, OR JUNE 30, 2005.

TOTAL ESTIMATED SOURCE OF FUNDS FOR  
GENERAL COURT 6,257,814 6,513,451  
GENERAL FUND 6,438,135  
OTHER FUNDS 75,316  
TOTAL 6,257,814 6,513,451

01 GENERAL GOVERNMENT  
02 LEGISLATIVE BRANCH  
02 LEGISLATIVE SERVICES  
01 LEGAL, RESEARCH & ADMINISTRATIVE

10 PERSONAL SERVICES - PERMANENT 869,897 900,459  
20 CURRENT EXPENSES 25,000 27,500  
30 EQUIPMENT NEW/REPLACEMENT 3,000 3,000  
50 PERSONAL SERVICE-TEMP/APPOINTEE 12,000 12,000  
60 BENEFITS 275,000 275,000  
70 IN-STATE TRAVEL 250 250  
80 OUT-OF-STATE TRAVEL 3,000 3,000  
91 CONTINUING LEGAL EDUCATION 2,500 2,500

NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, PERMANENT EMPLOYEES AS APPROVED BY THE LEGISLATIVE FACILITIES COMMITTEE SHALL BE ELIGIBLE FOR FRINGE BENEFITS AS PROVIDED FOR CLASSIFIED EMPLOYEES INCLUDING MEMBERSHIP IN THE RETIREMENT SYSTEM; MEDICAL, DENTAL AND LIFE INSURANCE COVERAGE; ANNUAL, SICK AND BONUS LEAVE; AND ANY



HB 0001	PAGE	8	06/03/03	(CONT.)	(CONT.)	(CONT.)	(CONT.)	(CONT.)
01 GENERAL GOVERNMENT								
02 LEGISLATIVE BRANCH								
02 LEGISLATIVE SERVICES								
01 LEGAL, RESEARCH & ADMINISTRATION								
OTHER BENEFITS THAT MAY BE GRANTED.								
TOTAL								
ESTIMATED SOURCE OF FUNDS FOR								
LEGAL, RESEARCH & ADMINISTRATION								
GENERAL FUND								
TOTAL								
01 GENERAL GOVERNMENT								
02 LEGISLATIVE BRANCH								
02 LEGISLATIVE SERVICES								
02 ADMINISTRATIVE RULES								
10 PERSONAL SERVICES - PERMANENT								
20 CURRENT EXPENSES								
30 EQUIPMENT NEW/REPLACEMENT								
60 BENEFITS								
70 IN-STATE TRAVEL								
80 OUT-OF-STATE TRAVEL								
90 PRINTING AND BINDING								
91 CONTINUING LEGAL EDUCATION								
NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, PERMANENT SERVICES AS PROVIDED BY THE LEGISLATIVE FACILITIES COMMITTEE SHALL BE ELIGIBLE FOR FRINGE BENEFITS AS PROVIDED FOR CLASSIFIED EMPLOYEES INCLUDING MEMBERSHIP IN THE RETIREMENT SYSTEM; MEDICAL, DENTAL AND LIFE INSURANCE COVERAGE; ANNUAL, SICK AND BONUS LEAVE; AND ANY OTHER BENEFITS THAT MAY BE GRANTED.								
TOTAL								
ESTIMATED SOURCE OF FUNDS FOR								
ADMINISTRATIVE RULES								
09 AGENCY INCOME								
GENERAL FUND								
TOTAL								
THE OFFICE AND FUNCTIONS OF THE OFFICE OF LEGISLATIVE SERVICES SHALL BE UNDER THE JURISDICTION OF THE JOINT COMMITTEE ON LEGISLATIVE FACILITIES.								

THE OFFICE AND FUNCTIONS OF THE OFFICE OF LEGISLATIVE SERVICES SHALL BE UNDER THE JURISDICTION OF THE JOINT COMMITTEE ON LEGISLATIVE FACILITIES.



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	FISCAL YEAR 2004	FISCAL YEAR 2005
1. Total	100.0	100.0
2. Government	100.0	100.0
3. Non-Government	100.0	100.0
4. Total	100.0	100.0
5. Government	100.0	100.0
6. Non-Government	100.0	100.0
7. Total	100.0	100.0
8. Government	100.0	100.0
9. Non-Government	100.0	100.0
10. Total	100.0	100.0
11. Government	100.0	100.0
12. Non-Government	100.0	100.0
13. Total	100.0	100.0
14. Government	100.0	100.0
15. Non-Government	100.0	100.0
16. Total	100.0	100.0
17. Government	100.0	100.0
18. Non-Government	100.0	100.0
19. Total	100.0	100.0
20. Government	100.0	100.0
21. Non-Government	100.0	100.0
22. Total	100.0	100.0
23. Government	100.0	100.0
24. Non-Government	100.0	100.0
25. Total	100.0	100.0
26. Government	100.0	100.0
27. Non-Government	100.0	100.0
28. Total	100.0	100.0
29. Government	100.0	100.0
30. Non-Government	100.0	100.0
31. Total	100.0	100.0
32. Government	100.0	100.0
33. Non-Government	100.0	100.0
34. Total	100.0	100.0
35. Government	100.0	100.0
36. Non-Government	100.0	100.0
37. Total	100.0	100.0
38. Government	100.0	100.0
39. Non-Government	100.0	100.0
40. Total	100.0	100.0
41. Government	100.0	100.0
42. Non-Government	100.0	100.0
43. Total	100.0	100.0
44. Government	100.0	100.0
45. Non-Government	100.0	100.0
46. Total	100.0	100.0
47. Government	100.0	100.0
48. Non-Government	100.0	100.0
49. Total	100.0	100.0
50. Government	100.0	100.0
51. Non-Government	100.0	100.0
52. Total	100.0	100.0
53. Government	100.0	100.0
54. Non-Government	100.0	100.0
55. Total	100.0	100.0
56. Government	100.0	100.0
57. Non-Government	100.0	100.0
58. Total	100.0	100.0
59. Government	100.0	100.0
60. Non-Government	100.0	100.0
61. Total	100.0	100.0
62. Government	100.0	100.0
63. Non-Government	100.0	100.0
64. Total	100.0	100.0
65. Government	100.0	100.0
66. Non-Government	100.0	100.0
67. Total	100.0	100.0
68. Government	100.0	100.0
69. Non-Government	100.0	100.0
70. Total	100.0	100.0
71. Government	100.0	100.0
72. Non-Government	100.0	100.0
73. Total	100.0	100.0
74. Government	100.0	100.0
75. Non-Government	100.0	100.0
76. Total	100.0	100.0
77. Government	100.0	100.0
78. Non-Government	100.0	100.0
79. Total	100.0	100.0
80. Government	100.0	100.0
81. Non-Government	100.0	100.0
82. Total	100.0	100.0
83. Government	100.0	100.0
84. Non-Government	100.0	100.0
85. Total	100.0	100.0
86. Government	100.0	100.0
87. Non-Government	100.0	100.0
88. Total	100.0	100.0
89. Government	100.0	100.0
90. Non-Government	100.0	100.0
91. Total	100.0	100.0
92. Government	100.0	100.0
93. Non-Government	100.0	100.0
94. Total	100.0	100.0
95. Government	100.0	100.0
96. Non-Government	100.0	100.0
97. Total	100.0	100.0
98. Government	100.0	100.0
99. Non-Government	100.0	100.0
100. Total	100.0	100.0

001 GENERAL GOVERNMENT (CONT.)  
02 LEGISLATIVE BRANCH (CONT.)  
03 LEGISLATIVE BUDGET ASSISTANT (CONT.)  
02 AUDIT DIVISION (CONT.)

70 IN-STATE TRAVEL  
80 OUT-OF STATE TRAVEL  
90 CONSULTANTS FEES  
91 CONTINUING PROFESSIONAL EDUC

TOTAL  
ESTIMATED SOURCE OF FUNDS FOR  
AUDIT DIVISION  
06 AGENCY INCOME  
GENERAL FUND  
TOTAL

FUNDS APPROPRIATED TO THE OFFICE OF THE LEGISLATIVE BUDGET ASSISTANT SHALL NOT LAPSE AT JUNE 30, 2003, JUNE 30, 2004 OR JUNE 30, 2005.

TOTAL	ESTIMATED SOURCE OF FUNDS FOR
	LEGISLATIVE BUDGET ASSISTANT
	GENERAL FUND
	OTHER FUNDS
TOTAL	

[illegible]

01 GENERAL GOVERNMENT  
03 EXECUTIVE OFFICE  
01 OFFICE OF THE GOVERNOR  
01 OFFICE OF THE GOVERNOR

10 PERSONAL SERVICES - PERMANENT  
11 SALARY OF GOVERNOR  
20 CURRENT EXPENSES  
22 RENTS&LEASES OTHER THAN STATE  
26 ORGANIZATIONAL DUES

814,234	854,946
1	1
70,000	73,500
16,000	16,800
100,000	105,000

HB 0001		PAGE	11	06/03/03	----- FISCAL YEAR 2004 -----		----- FISCAL YEAR 2005-----	
01 GENERAL GOVERNMENT					(CONT.)			
03 EXECUTIVE OFFICE					(CONT.)			
01 OFFICE OF THE GOVERNOR					(CONT.)			
01 OFFICE OF THE GOVERNOR					(CONT.)			
30 EQUIPMENT NEW/REPLACEMENT					3,000		3,150	
50 PERSONAL SERVICE -TEMP/APPOINTE					897		942	
60 BENEFITS					301,336		316,402	
70 IN-STATE TRAVEL					10,000		10,500	
80 OUT-OF STATE TRAVEL					5,000		5,250	
91 GOVERNOR'S CONTINGENCY FUND					15,000		15,750	
92 GOVERNOR'S SPECIAL FUND					15,000		15,750	
93 EMERGENCY FUND					5,000		5,250	
95 OPERATING BUDGET CONTINGENT					5,000		5,250	
97 INTERNAL FINANCIAL CONTROL					5,000		5,250	
98 COMPUTER MAINT/REPAIR/REPLACE					17,023		17,874	
99 BONUSES / AWARDS					102,703		107,838	
* TRANSFERS FROM THIS FUND ARE SUBJECT TO PRIOR								
APPROVAL BY GOVERNOR & COUNCIL AND MAY BE MADE								
TO ALL STATE AGENCY APPROPRIATIONS, EXCLUDING								
GOVERNOR & COUNCIL. THE ADMINISTRATOR, BUREAU								
OF ACCOUNTING SHALL KEEP A RECORD OF TRANSFERS								
APPROVED FOR OTHER THAN GENERAL FUND AGENCIES								
AND SHALL REPORT SPECIAL FUND TRANSFERS TO THE								
LEGISLATURE FOR APPROPRIATE ADJUSTMENT BETWEEN								
FUNDS..								
TOTAL					1,485,194		1,559,453	
ESTIMATED SOURCE OF FUNDS FOR								
OFFICE OF THE GOVERNOR								
GENERAL FUND					1,485,194		1,559,453	
TOTAL					1,485,194		1,559,453	
01 GENERAL GOVERNMENT								
03 EXECUTIVE OFFICE								
01 OFFICE OF THE GOVERNOR								
02 WORKER'S COMPENSATION								
90 WORKER'S COMPENSATION					0		1,000	
TOTAL					1,000		1,000	
ESTIMATED SOURCE OF FUNDS FOR					1,000		1,000	
WORKER'S COMPENSATION					1,000		1,000	
GENERAL FUND					1,000		1,000	
TOTAL					1,000		1,000	
TOTAL					1,486,194		1,560,453	
ESTIMATED SOURCE OF FUNDS FOR								
OFFICE OF THE GOVERNOR								

		----- FISCAL YEAR 2004 -----		----- FISCAL YEAR 2005 -----	
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(CONT.)					
01 GENERAL GOVERNMENT					
03 EXECUTIVE OFFICE					
01 OFFICE OF THE GOVERNOR					
(CONT.)					
GENERAL FUND					
TOTAL		1,486,194		1,560,453	
		1,486,194		1,560,453	
01 GENERAL GOVERNMENT					
03 EXECUTIVE OFFICE					
02 EXECUTIVE COUNCIL					
11 COUNCILORS COMPENSATION		61,370		61,570	
12 EXEC ASSISTANT'S COMPENSATION		46,604		46,168	
20 CURRENT EXPENSES		16,000		16,000	
30 EQUIPMENT NEW/REPLACEMENT		1,300		1,300	
50 PERSONAL SERVICE-TEMP/APPOINTE		15,275		15,575	
60 BENEFITS		23,058		24,098	
70 IN-STATE TRAVEL		22,550		22,550	
80 OUT-OF STATE TRAVEL		1,500		1,500	
TOTAL		187,657		191,941	
ESTIMATED SOURCE OF FUNDS FOR					
EXECUTIVE COUNCIL					
GENERAL FUND		187,657		191,941	
TOTAL		187,657		191,941	

THE FOLLOWING PAYMENTS SHALL BE MADE  
IN LIEU OF EXPENSES FOR MEMBERS OF THE  
EXECUTIVE COUNCIL:

	FY04	FY05
DISTRICT I	5000	5000
DISTRICT II	4000	4000
DISTRICT III	4000	4000
DISTRICT IV	4000	4000
DISTRICT V	4000	4000

ONE TWELFTH OF THE AMOUNTS SPECIFIED  
HEREIN SHALL BE PAID TO THE COUNCILOR  
WHO WAS REPRESENTING THE DISTRICT ON  
THE LAST DAY OF EACH MONTH.

HB 0001 PAGE 13 06/03/03		----- FISCAL YEAR 2004 -----		----- FISCAL YEAR 2005 -----	
01 GENERAL GOVERNMENT					
03 EXECUTIVE OFFICE					
03 GOVERNOR'S COMM ON DISABILITY					
01 COMMISSION ON DISABILITY					
10 PERSONAL SERVICES - PERMANENT					
11 SALARY OF EXECUTIVE DIRECTOR	149,114		154,546		
20 CURRENT EXPENSES	57,209		60,518		
22 RENTS&LEASES OTHER THAN STATE	19,270		17,872		
26 ORGANIZATIONAL DUES	20,426		20,325		
30 EQUIPMENT NEW/REPLACEMENT	35		35		
50 PERSONAL SERVICE-TEMP/APPOINTEE	3,000		3,000		
60 BENEFITS	19,032		19,666		
70 IN-STATE TRAVEL	81,689		84,923		
80 OUT-OF STATE TRAVEL	4,000		4,000		
90 SPECIAL OLYMPICS	600		600		
91 TASK FORCE ON DEAFNESS	22,513		22,513		
92 ADA TRAINING	10		10		
	7,781		7,402		
TOTAL		384,879		395,410	
ESTIMATED SOURCE OF FUNDS FOR					
COMMISSION ON DISABILITY					
05 PRIVATE/LOCAL FUNDS	1	19,000		19,000	
07 AGENCY INCOME	1	30,382		31,146	
GENERAL FUND		335,497		345,346	
TOTAL		384,879		395,410	
01 GENERAL GOVERNMENT					
03 EXECUTIVE OFFICE					
03 GOVERNOR'S COMM ON DISABILITY					
02 CLIENT ASSISTANCE PROGRAM					
10 PERSONAL SERVICES - PERMANENT					
20 CURRENT EXPENSES	70,919		73,087		
22 RENTS&LEASES OTHER THAN STATE	4,700		3,450		
26 ORGANIZATIONAL DUES	7,215		7,215		
30 EQUIPMENT NEW/REPLACEMENT	1		1		
40 INDIRECT COSTS	2,000		2,000		
41 AUDIT FUND SET ASIDE	3,018		3,018		
42 ADDITIONAL FRINGE BENEFITS	121		121		
46 CONSULTANTS	4,113		4,239		
60 BENEFITS	2,196		350		
70 IN-STATE TRAVEL	26,240		27,042		
80 OUT-OF STATE TRAVEL	100		100		
	100		100		
TOTAL		120,723		120,723	
ESTIMATED SOURCE OF FUNDS FOR					
CLIENT ASSISTANCE PROGRAM					
00 FEDERAL FUNDS		120,723		120,723	
TOTAL		120,723		120,723	

----- FISCAL YEAR 2004 -----		----- FISCAL YEAR 2005 -----	
U8 0001	PAGE 14 06/03/03		
01 GENERAL GOVERNMENT			
03 EXECUTIVE OFFICE			
03 GOVERNOR'S COMM ON DISABILITY			
03 TELECOMMUNICATIONS ASSISTANCE			
90 TELECOMMUNICATIONS ASSISTANCE			
TOTAL	96,000	96,000	
ESTIMATED SOURCE OF FUNDS FOR			
TELECOMMUNICATIONS ASSISTANCE	96,000	96,000	
09 AGENCY INCOME	96,000	96,000	
TOTAL	96,000	96,000	
1			
TOTAL			
ESTIMATED SOURCE OF FUNDS FOR			612,133
GOVERNOR'S COMM ON DISABILITY	601,602		
FEDERAL FUNDS	120,723		120,723
GENERAL FUND	335,497		345,394
OTHER FUNDS	145,382		146,016
TOTAL	601,602		612,133
01 GENERAL GOVERNMENT			
03 EXECUTIVE OFFICE			
05 STATE PLANNING AND ENERGY PROGRAMS			
01 STATE PLANNING OFFICE			
01 STATE PLANNING ADMINISTRATION			
10 PERSONAL SERVICES - PERMANENT	517,284	532,255	
16 PERSONAL SERVICES-NON-CLASSIFI	101,727	101,727	
20 CURRENT EXPENSES	38,150	39,722	
29 REIMBURSEMENTS OTHER THAN STATE	29,101	31,587	
30 EQUIPMENT REW/REPLACEMENT	12,000	12,000	
44 CONSULTANT	12,400	2,400	
50 PERSONAL SERVICE-TEMP/APPOINTEE	12,500	12,500	
60 BENEFITS	222,221	234,625	
70 IN-STATE TRAVEL	2,800	2,800	
80 OUT-OF STATE TRAVEL	2,800	2,800	
91 GEOGRAPHIC INFORMATION SYSTEM	70,000	70,000	
92 PASS THROUGH FUNDS	230,000	230,000	
94 GRANIT SUPPORT	10,000	10,000	
96 CONN RIVER VALLEY FLOOD CONT	2,000	2,000	
97 NORTH COUNTRY COUNCIL	15,000	15,000	
TOTAL	1,273,683	1,298,616	
ESTIMATED SOURCE OF FUNDS FOR			
STATE PLANNING ADMINISTRATION			
510 FEDERAL FUNDS	25,900	25,900	
07 AGENCY INCOME	42,197	42,197	
08 AGENCY INCOME	10,000	10,000	
GENERAL FUND	1,195,586	1,220,519	
TOTAL	1,273,683	1,298,616	
1			

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01 GENERAL GOVERNMENT					
03 EXECUTIVE OFFICE					
05 STATE PLANNING AND ENERGY PROGRAMS					
01 STATE PLANNING OFFICE					
02 ENERGY PROGRAM SERVICES					
10 PERSONAL SERVICES - PERMANENT					
20 CURRENT EXPENSES	340,000			340,000	
22 RENT/LEASES OTHER THAN STATE	89,842			76,506	
24 MAINT. OTHER THAN BULD. & GRNDS	29,463			29,463	
26 ORGANIZATIONAL DUES				12,665	
30 EQUIPMENT NEW/REPLACEMENT	10,130			10,130	
40 INDIRECT COSTS	15,100			14,600	
42 ADDITIONAL FRINGE BENEFITS	8,637			8,637	
44 ADDITIONAL SET ASIDE	13,297			13,291	
46 CONSULTANTS	42,043			42,043	
49 TRANSFERS TO OTHER AGENCIES	3,893			3,893	
60 BENEFITS	386,746			384,590	
70 IN-STATE TRAVEL	125,800			125,800	
80 OUT-OF STATE TRAVEL	9,501			9,520	
90 SENIOR EMPLOYMENT	32,000			32,000	
91 CONTRACTED SERVICES	482,753			482,753	
92 FUEL ASSISTANCE CONTRACTS	10,448,544			9,389	
94 WEATHERIZATION CONTRACTS	1,457,680			10,448,544	
98 SEP FORMULA GRANTS	380,572			1,457,680	
99 HEADSTART CONTRACTS	241,337			380,572	
TOTAL	14,126,727			241,337	
ESTIMATED SOURCE OF FUNDS FOR					
ENERGY PROGRAM SERVICES					
00 FEDERAL FUNDS		13,781,742		13,778,827	
01 AGENCY INCOME		7,247		7,248	
05 PRIVATE LOCAL FUNDS		36,401		36,401	
09 AGENCY INCOME		60,000		60,000	
GENERAL FUND		241,337		241,337	
TOTAL		14,126,727		14,123,813	
01 GENERAL GOVERNMENT					
03 EXECUTIVE OFFICE					
05 STATE PLANNING AND ENERGY PROGRAMS					
01 STATE PLANNING OFFICE					
03 NATIONAL FLOOD INSURANCE PROG					
10 PERSONAL SERVICES - PERMANENT					
20 CURRENT EXPENSES	36,678			37,518	
22 RENT/LEASES OTHER THAN STATE	2,700			2,700	
24 MAINT. OTHER THAN BULD. & GRNDS	2,000			2,100	
26 ORGANIZATIONAL DUES	150			150	
30 EQUIPMENT NEW/REPLACEMENT	1,000			800	
40 INDIRECT COSTS	1,250			1,250	
42 ADDITIONAL FRINGE BENEFITS	2,250			2,250	
44 ADDITIONAL SET ASIDE	13,571			13,582	
46 CONSULTANTS				13,582	
60 BENEFITS	500			500	
70 IN-STATE TRAVEL	2,000			2,000	
80 OUT-OF STATE TRAVEL	13,500			13,500	
92 PASS THROUGH FUNDS					



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01 GENERAL GOVERNMENT					
03 EXECUTIVE OFFICE					
05 STATE PLANNING AND ENERGY PROGRAMS					
01 STATE PLANNING OFFICE					
03 NATIONAL FLOOD INSURANCE PROG					
(CONT.)					
(CONT.)					
TOTAL					
ESTIMATED SOURCE OF FUNDS FOR		75,599		76,650	
NATIONAL FLOOD INSURANCE PROG					
01 TRANSFERS FROM OTHER AGENCIES					
TOTAL		75,599		76,650	
01 GENERAL GOVERNMENT					
03 EXECUTIVE OFFICE					
05 STATE PLANNING AND ENERGY PROGRAMS					
01 STATE PLANNING OFFICE					
04 MUNICIPAL/REGIONAL ASSISTANCE					
10 PERSONAL SERVICES - PERMANENT					
20 CURRENT EXPENSES					
22 RENT/LEASES OTHER THAN STATE					
26 ORGANIZATIONAL DUES					
30 EQUIPMENT NEW/REPLACEMENT					
46 CONSULTANTS					
50 PERSONAL SERVICE - TEMP/APPOINTEE					
60 BENEFITS					
70 IN-STATE TRAVEL					
80 OUT-OF STATE TRAVEL					
90 CONTRACTUAL					
TOTAL					
ESTIMATED SOURCE OF FUNDS FOR		193,547		198,991	
MUNICIPAL/REGIONAL ASSISTANCE					
GENERAL FUND					
TOTAL		193,547		198,991	
01 GENERAL GOVERNMENT					
03 EXECUTIVE OFFICE					
05 STATE PLANNING AND ENERGY PROGRAMS					
01 STATE PLANNING OFFICE					
05 CONNECTICUT RIVER VALLEY					
90 CONNECTICUT RIVER VALLEY PROJ					
TOTAL					
ESTIMATED SOURCE OF FUNDS FOR		39,285		39,285	
CONNECTICUT RIVER VALLEY					
GENERAL FUND					
TOTAL		39,285		39,285	

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01	GENERAL GOVERNMENT						
03	EXECUTIVE OFFICE						
05	STATE PLANNING AND ENERGY PROGRAMS						
01	STATE PLANNING OFFICE						
07	LCIP MONITORING ENDOWMENT						
20	CURRENT EXPENSES			5,675		5,675	
22	RENTS/LEASES OTHER THAN STATE			3,720		3,880	
26	ORGANIZATIONAL DUES			1,500		1,500	
30	EQUIPMENT NEW/REPLACEMENT			76,927		76,927	
59	PART-TIME - BENEFITTED			28,463		28,463	
60	BENEFITS			1,300		1,300	
70	IN-STATE TRAVEL			2,000		2,000	
80	OUT-OF STATE TRAVEL			7,077		7,077	
90	CONTRACTUAL						
TOTAL				126,912		127,072	
	ESTIMATED SOURCE OF FUNDS FOR						
LCIP MONITORING ENDOWMENT							
07 AGENCY INCOME				6,912		7,072	
09 AGENCY INCOME				120,000		120,000	
TOTAL				126,912		127,072	
01	GENERAL GOVERNMENT						
03	EXECUTIVE OFFICE						
05	STATE PLANNING AND ENERGY PROGRAMS						
01	STATE PLANNING OFFICE						
08	WORKER/UNEEMPLOY COMP						
90	WORKER'S COMPENSATION			11,000		11,000	
91	UNEEMPLOYMENT COMPENSATION			1,000		1,000	
TOTAL				12,000		12,000	
	ESTIMATED SOURCE OF FUNDS FOR						
WORKER/UNEEMPLOY COMP							
08 FEDERAL FUNDS				2,000		2,000	
GENERAL FUND				10,000		10,000	
TOTAL				12,000		12,000	
01	GENERAL GOVERNMENT						
03	EXECUTIVE OFFICE						
05	STATE PLANNING AND ENERGY PROGRAMS						
01	STATE PLANNING OFFICE						
09	INFORMATION TECHNOLOGY MGMT						
16	PERSONAL SERVICES-NON CLASSIFI						
60	BENEFITS			150,000		150,000	
TOTAL				22,500		22,500	
	ESTIMATED SOURCE OF FUNDS FOR						
INFORMATION TECHNOLOGY MGMT							
GENERAL FUND				172,500		172,500	
TOTAL				172,500		172,500	

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01 GENERAL GOVERNMENT								
03 EXECUTIVE OFFICE								
05 STATE PLANNING AND ENERGY PROGRAMS								
02 STATE PLANNING GRANTS								
02 COASTAL ZONE MANAGEMENT								
10 PERSONAL SERVICES - PERMANENT								
20 CURRENT EXPENSES								
22 RENTS&LEASES OTHER THAN STATE								
26 ORGANIZATIONAL DUES								
30 EQUIPMENT NEW/REPLACEMENT								
40 INDIRECT COSTS								
41 AUDIT FUND SET ASIDE								
42 ADDITIONAL FRINGE BENEFITS								
49 TRANSFERS TO OTHER STATE AGENCIES								
50 PERSONAL SERVICE-TEMP/APPOINTEE								
60 BENEFITS								
70 IN-STATE TRAVEL								
80 OUT-OF-STATE TRAVEL								
90 SPECIAL PROJECTS								
91 SUPPLEMENTAL 310								
92 PASS THROUGH FUNDS								
TOTAL					1,704,188		1,714,213	
ESTIMATED SOURCE OF FUNDS FOR								
COASTAL ZONE MANAGEMENT								
00 FEDERAL FUNDS					1,561,253		1,561,962	
GENERAL FUND					142,935		152,251	
TOTAL					1,704,188		1,714,213	
01 GENERAL GOVERNMENT								
03 EXECUTIVE OFFICE								
05 STATE PLANNING AND ENERGY PROGRAMS								
02 STATE PLANNING GRANTS								
03 NATIONAL PARK SERVICE								
10 PERSONAL SERVICES - PERMANENT								
20 CURRENT EXPENSES								
22 RENTS&LEASES OTHER THAN STATE								
26 ORGANIZATIONAL DUES								
30 EQUIPMENT NEW/REPLACEMENT								
60 BENEFITS								
70 IN-STATE TRAVEL								
80 OUT-OF-STATE TRAVEL								
90 SCORP PROJECTS								
TOTAL					102,724		105,263	
ESTIMATED SOURCE OF FUNDS FOR								
NATIONAL PARK SERVICE								
09 AGENCY INCOME					50,000		50,000	
GENERAL FUND					52,724		55,263	
TOTAL					102,724		105,263	

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01 GENERAL GOVERNMENT					
03 EXECUTIVE OFFICE					
05 STATE PLANNING AND ENERGY PROGRAMS					
02 STATE PLANNING GRANTS					
04 SCENIC BY-WAYS					
10 PERSONAL SERVICES - PERMANENT					
20 CURRENT EXPENSES	44,089			45,128	
22 RENT/LEASES OTHER THAN STATE	11,740			11,701	
26 ORGANIZATIONAL DUES	1,600			1,665	
30 EQUIPMENT NEW/REPLACEMENT	300			300	
40 INDIRECT COSTS	1,000			1,000	
42 ADDITIONAL FRINGE BENEFITS	240			527	
46 BENEFITS	16,513			279	
70 IN-STATE TRAVEL	2,000			16,677	
80 OUT-OF STATE TRAVEL	2,000			2,000	
90 CONTRACTUAL	80,000			80,000	
TOTAL		159,795			161,297
ESTIMATED SOURCE OF FUNDS FOR					
SCENIC BY-WAYS					
09 AGENCY INCOME					
GENERAL FUND		119,846		120,974	
TOTAL		159,795		40,323	161,297
01 GENERAL GOVERNMENT					
03 EXECUTIVE OFFICE					
05 STATE PLANNING AND ENERGY PROGRAMS					
02 STATE PLANNING GRANTS					
06 NH ESTUARIES PROJECT					
20 CURRENT EXPENSES	17,997			17,997	
22 RENT/LEASES OTHER THAN STATE	8,262			8,456	
30 EQUIPMENT NEW/REPLACEMENT	3,000			3,000	
40 INDIRECT COSTS	2,168			2,171	
41 AUDIT FUND SET ASIDE	538			538	
42 ADDITIONAL FRINGE BENEFITS	4,368			4,368	
46 CONSULTANTS	1,500			1,500	
50 PERSONAL SERVICE-TEMP/APPOINTEE	20,220			20,220	
59 PART-TIME - BENEFITTED	75,302			75,302	
60 BENEFITS	23,409			29,409	
70 IN-STATE TRAVEL	3,000			3,000	
80 OUT-OF STATE TRAVEL	10,000			10,000	
90 WORKSHOP EXPENSES	1,500			1,500	
92 PASS THROUGH FUNDS	360,000			360,000	
TOTAL		537,264			537,461
ESTIMATED SOURCE OF FUNDS FOR					
NH ESTUARIES PROJECT					
00 FEDERAL FUNDS					
TOTAL		537,264		537,461	





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(CONT.)					
01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
01 OFFICE OF THE COMMISSIONER					
(CONT.)					
02 BUDGET OFFICE					
(CONT.)					
01 BUDGET OFFICE					
(CONT.)					
TOTAL		1,313,241		1,364,144	
01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
01 OFFICE OF THE COMMISSIONER					
02 BUDGET OFFICE					
02 BUSINESS OFFICE					
10 PERSONAL SERVICES - PERMANENT					
18 OVERTIME					
20 CURRENT EXPENSES					
22 RENTSALESEAS. OTHER THAN STATE					
24 MAINT. OTHER THAN BULD. & GRNDS					
30 EQUIPMENT NEW/REPLACEMENT					
50 PERSONAL SERVICE-TEMP/APPOINTEE					
60 BENEFITS					
70 IN-STATE TRAVEL					
80 OUT-OF STATE TRAVEL					
91 STAFF DEVELOPMENT & TRAINING					
TOTAL		172,207	177,206		
ESTIMATED SOURCE OF FUNDS FOR		1,200	1,200		
BUSINESS OFFICE		1,430	9,430		
GENERAL FUND		2,337	1,700		
TOTAL		5,000	2,737		
		5,000	5,500		
		64,564	5,000		
		75	66,593		
		200	200		
		1,500	1,500		
TOTAL		262,093	268,941		
ESTIMATED SOURCE OF FUNDS FOR		262,093	268,941		
BUSINESS OFFICE		262,093	268,941		
GENERAL FUND					
TOTAL					
01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
01 OFFICE OF THE COMMISSIONER					
02 BUDGET OFFICE					
03 SPECIAL DISBURSEMENTS					
26 ORGANIZATIONAL DUES					
93 FIREMENS RELIEF					
95 GROUP LIFE INSURANCE					
97 FEDERAL FUNDS FOR STATES					
99 EXECUTIVE OFFICE, TRANSITION					
TOTAL		9,800	10,000		
ESTIMATED SOURCE OF FUNDS FOR		6,000	6,000		
SPECIAL DISBURSEMENTS		300	400		
GENERAL FUND		5,000	5,000		
TOTAL		21,100	75,000		
			96,400		
		21,100	96,400		
		21,100	96,400		

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01 GENERAL GOVERNMENT						
04 DEPT ADMINISTRATIVE SERVICES						
01 OFFICE OF THE COMMISSIONER						
03 BUREAU OF RISK MANAGEMENT						
10 PERSONAL SERVICES - PERMANENT						
20 CURRENT EXPENSES			141,742	145,533		
26 ORGANIZATIONAL DUES			5,455	5,455		
30 EQUIPMENT NEW/REPLACEMENT			500	500		
60 BENEFITS			200	200		
70 IN-STATE TRAVEL			52,445	53,847		
80 OUT-OF-STATE TRAVEL			1,065	1,065		
90 BONDING INSURANCE			1,000	1,000		
91 CATASTROPHIC CASUALTY INS			10,500	10,500		
92 STAFF DEVELOPMENT			245,000	240,000		
TOTAL			1,156	1,156		
ESTIMATED SOURCE OF FUNDS FOR			459,063	499,256		
BUREAU OF RISK MANAGEMENT						
09 AGENCY INCOME						
GENERAL FUND						
TOTAL			459,063	499,256		
01 GENERAL GOVERNMENT						
04 DEPT ADMINISTRATIVE SERVICES						
01 OFFICE OF THE COMMISSIONER						
04 OFFICE OF COST CONTAINMENT						
10 PERSONAL SERVICES - PERMANENT						
20 CURRENT EXPENSES			271,141	281,004		
30 EQUIPMENT NEW/REPLACEMENT			40,879	42,779		
50 PERSONAL SERVICE-TEMP/APPOINTE			2,500	2,500		
60 BENEFITS			13,000	13,000		
70 IN-STATE TRAVEL			101,317	104,967		
TOTAL			2,460	2,569		
ESTIMATED SOURCE OF FUNDS FOR			431,297	446,819		
OFFICE OF COST CONTAINMENT						
GENERAL FUND						
TOTAL			431,297	446,819		
01 GENERAL GOVERNMENT						
04 DEPT ADMINISTRATIVE SERVICES						
01 OFFICE OF THE COMMISSIONER						
05 WORKER'S COMPENSATION						
99 WORKERS COMPENSATION						
TOTAL			1,600	1,600		
ESTIMATED SOURCE OF FUNDS FOR			1,600	1,600		
WORKER'S COMPENSATION						



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01 GENERAL GOVERNMENT				
04 DEPT ADMINISTRATIVE SERVICES				
01 OFFICE OF THE COMMISSIONER				
05 WORKER'S COMPENSATION				
	(CONT.)			
	(CONT.)			
	(CONT.)			
	(CONT.)			
GENERAL FUND	1,600		1,600	
TOTAL	1,600		1,600	
01 GENERAL GOVERNMENT				
04 DEPT ADMINISTRATIVE SERVICES				
01 OFFICE OF THE COMMISSIONER				
06 UNEMPLOYMENT COMPENSATION				
	10,000		10,000	
99 UNEMPLOYMENT COMPENSATION				
TOTAL	10,000		10,000	
ESTIMATED SOURCE OF FUNDS FOR				
UNEMPLOYMENT COMPENSATION				
GENERAL FUND	10,000		10,000	
TOTAL	10,000		10,000	
TOTAL				
ESTIMATED SOURCE OF FUNDS FOR				
OFFICE OF THE COMMISSIONER	2,796,885		3,002,448	
GENERAL FUND				
OTHER FUNDS	2,789,385		2,996,968	
TOTAL	2,796,885		3,002,448	
01 GENERAL GOVERNMENT				
04 DEPT ADMINISTRATIVE SERVICES				
02 DIVISION OF ACCOUNTING SERVICE				
01 FINANCIAL REPORTING				
	163,217		167,639	
10 PERSONAL SERVICES - PERMANENT				
11 SALARY OF DIRECTOR	84,632		84,632	
20 CURRENT EXPENSES	7,000		8,050	
26 ORGANIZATIONAL DUES	2,000		3,500	
60 BENEFITS	91,704		93,340	
70 IN-STATE TRAVEL	100		100	
80 OUT-OF-STATE TRAVEL	1,350		1,350	
91 PREPARATION OF ANNUAL REPORTS	9,000		10,000	

\* PREPARATION OF ANNUAL REPORTS.  
THIS APPROPRIATION SHALL BE USED TO MEET THE  
REQUIREMENTS OF RSA 21-1:8, 1 (H) RELATIVE TO  
A COMPLETED COMPREHENSIVE ANNUAL REPORT NOT  
LATER THAN 90 DAYS AFTER THE CLOSE OF THE

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01 GENERAL GOVERNMENT			(CONT.)			
04 DEPT ADMINISTRATIVE SERVICES			(CONT.)			
02 DIVISION OF ACCOUNTING SERVICE			(CONT.)			
01 FINANCIAL REPORTING			(CONT.)			
FISCAL YEAR . SUBSEQUENT REQUIREMENTS FOR COMPLETING, AND PRINTING OF AN AUDITED ANNUAL REPORT SHALL ALSO BE INCLUDED. THIS APPROPRIATION SHALL NOT BE USED FOR THE COST OF AUDITING SUCH REPORT FROM AUDITS RELATIVE TO THE LEGISLATIVE BUDGET ASSISTANT IN ADDITION TO THE LEGISLATIVE BUDGET ASSISTANT IN ADDITION THIS EXPENDITURE CLASS INCLUDES APPROPRIATIONS FOR COMPLETING AND PRINTING THE SUPPLEMENTAL BUDGETARY FINANCIAL DATA REPORT AND THE STATE OWNED REAL PROPERTY REPORT .						
TOTAL			359,003	368,611		
ESTIMATED SOURCE OF FUNDS FOR FINANCIAL REPORTING						
GENERAL FUND			359,003	368,611		
TOTAL			359,003	368,611		
01 GENERAL GOVERNMENT						
04 DEPT ADMINISTRATIVE SERVICES						
02 DIVISION OF ACCOUNTING SERVICE						
02 BUREAU OF ACCOUNTING						
10 PERSONAL SERVICES - PERMANENT			530,557	543,069		
20 CURRENT EXPENSES			11,108	13,000		
30 EQUIPMENT NEW/REPLACEMENT			1,000	2,000		
50 PERSONAL SERVICE - TEMP/APPOINTE			14,000	17,000		
60 BENEFITS			197,377	202,237		
70 IN-STATE TRAVEL			100	100		
90 STAFF DEVELOPMENT & TRAINING			800	1,200		
TOTAL			754,942	778,606		
ESTIMATED SOURCE OF FUNDS FOR BUREAU OF ACCOUNTING						
GENERAL FUND			754,942	778,606		
TOTAL			754,942	778,606		
TOTAL			1,113,945	1,147,217		
ESTIMATED SOURCE OF FUNDS FOR DIVISION OF ACCOUNTING SERVICE						
GENERAL FUND			1,113,945	1,147,217		
TOTAL			1,113,945	1,147,217		

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01 GENERAL GOVERNMENT								
04 DEPT ADMINISTRATIVE SERVICES								
03 DIVISION OF PERSONNEL								
01 PERSONNEL ADMIN & SUPPORT								
10 PERSONAL SERVICES - PERMANENT								
11 SALARY OF DIRECTOR				735,948		759,945		
12 SALARY OF EDUC&TRAINING OFFICER				85,032		85,032		
18 OVERTIME				63,976		63,976		
20 CURRENT EXPENSES				1,000		1,000		
22 RENT&LEASES OTHER THAN STATE				41,930		41,930		
24 MAINT. OTHER THAN BUILD.& GRNDS				12,068		12,068		
26 ORGANIZATIONAL DUES				620		620		
28 TRANSFERS TO GENERAL SERVICES				2,033		2,033		
30 EQUIPMENT NEW/REPLACEMENT				11,209		11,351		
50 PERSONAL SERVICE-TEMP/APPOINTEE				1,900		1,900		
60 BENEFITS				27,481		27,481		
70 IN-STATE TRAVEL				329,906		338,785		
80 OUT-OF STATE TRAVEL				2,000		2,000		
TOTAL				3,000		3,000		
ESTIMATED SOURCE OF FUNDS FOR				1,318,103		1,351,121		
PERSONNEL ADMIN & SUPPORT								
09 AGENCY INCOME				98,856		98,998		
GENERAL FUND				1,219,247		1,252,123		
TOTAL				1,318,103		1,351,121		
01 GENERAL GOVERNMENT								
04 DEPT ADMINISTRATIVE SERVICES								
03 DIVISION OF PERSONNEL								
02 BUR OF EMPLOYEE RELATIONS								
11 SALARY OF MGR BUR EMPL RELATNS				72,083		72,083		
20 CURRENT EXPENSES				1,939		1,939		
26 ORGANIZATIONAL DUES				2,500		2,500		
60 BENEFITS				26,671		26,671		
70 IN-STATE TRAVEL				300		300		
90 MEDIATION AND FACT-FINDING				5,700		5,700		
TOTAL				109,193		109,193		
ESTIMATED SOURCE OF FUNDS FOR				109,193		109,193		
BUR OF EMPLOYEE RELATIONS								
GENERAL FUND				109,193		109,193		
TOTAL				109,193		109,193		

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01 GENERAL GOVERNMENT								
04 DEPT ADMINISTRATIVE SERVICES								
03 DIVISION OF PERSONNEL								
03 PERSONNEL BOARD OF APPEALS								
20 CURRENT EXPENSES				250		250		
50 PERSONAL SERVICE - TEMP/APPOINTE				16,489		16,489		
60 BENEFITS				1,261		1,261		
70 IN-STATE TRAVEL				1,600		1,600		
TOTAL					19,600		19,600	
ESTIMATED SOURCE OF FUNDS FOR								
PERSONNEL BOARD OF APPEALS								
GENERAL FUND					19,600		19,600	
TOTAL					19,600		19,600	
TOTAL								
ESTIMATED SOURCE OF FUNDS FOR					1,466,896		1,479,914	
DIVISION OF PERSONNEL								
GENERAL FUND					1,348,040		1,380,916	
OTHER FUNDS					98,856		98,998	
TOTAL					1,446,896		1,479,914	
01 GENERAL GOVERNMENT								
04 DEPT ADMINISTRATIVE SERVICES								
04 DIV. OF PLANT & PROPERTY MGMT.								
01 PLANT & PROPERTY ADMINISTRATION								
11 PERSONAL SERVICES-UNCLASSIFIED								
20 CURRENT EXPENSES				77,254		77,254		
60 BENEFITS				1,055		1,055		
70 IN-STATE TRAVEL				28,584		28,584		
TOTAL				200		200		
ESTIMATED SOURCE OF FUNDS FOR					107,093		107,093	
PLANT & PROPERTY ADMINISTRATION								
GENERAL FUND					107,093		107,093	
TOTAL					107,093		107,093	
01 GENERAL GOVERNMENT								
04 DEPT ADMINISTRATIVE SERVICES								
04 DIV. OF PLANT & PROPERTY MGMT.								
02 BUREAU OF PURCHASE & PROPERTY								
01 PURCHASING ADMINISTRATION								
10 PERSONAL SERVICES - PERMANENT								
20 CURRENT EXPENSES				709,182		730,763		
24 MAINT. OTHER THAN BUILD. & GRNDS				38,400		38,400		
26 ORGANIZATIONAL DUES				500		500		
30 EQUIPMENT NEW/REPLACEMENT				1,600		1,600		
TOTAL				20,300		3,300		

----- FISCAL YEAR 2004 -----			----- FISCAL YEAR 2005 -----		
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(CONT.)					
01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
04 DIV. OF PLANT & PROPERTY MGMT.					
02 BUREAU OF PURCHASE & PROPERTY					
01 PURCHASING ADMINISTRATION					
40 BENEFITS			262,398	270,382	
70 IN-STATE TRAVEL			500	500	
80 OUT-OF-STATE TRAVEL			500	1,000	
TOTAL			1,033,380		1,046,445
ESTIMATED SOURCE OF FUNDS FOR					
PURCHASING ADMINISTRATION					
01 TRANSFERS FROM OTHER AGENCIES			64,975		46,041
09 FROM SURPLUS			907,338		82,903
GENERAL FUND			1,033,380		917,501
TOTAL					1,046,445
(CONT.)					
01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
04 DIV. OF PLANT & PROPERTY MGMT.					
02 BUREAU OF PURCHASE & PROPERTY					
02 SURPLUS FOOD					
10 PERSONAL SERVICES - PERMANENT			224,604	232,396	
18 OVERTIME			63	63	
20 CURRENT EXPENSES			44,568	44,568	
22 RENT/LEASES OTHER THAN STATE			2,000	2,000	
24 MAINT. OTHER THAN BUILD. & GRNDS			2,000	2,000	
26 ORGANIZATIONAL DUES			503	503	
28 TRANSFERS TO GENERAL SERVICES		D	71,172	71,172	
30 EQUIPMENT NEW/REPLACEMENT			60,000	60,000	
40 INDIRECT COSTS			4,535	4,535	
42 ADDITIONAL FRINGE BENEFITS		E	8,972	8,972	
49 TRANSFERS TO OTHER STATE AGENCS			44,975	44,041	
50 PERSONAL SERVICE-TEMP/APPOINTE		D	40,381	41,213	
60 BENEFITS TRAVEL			86,215	89,163	
80 OUT-OF-STATE TRAVEL			100	100	
90 PROCESSING FEES			600,000	600,000	
91 GRANTS (AUDITS)			5,500	5,500	
TOTAL			1,200,088		1,212,726
ESTIMATED SOURCE OF FUNDS FOR					
SURPLUS FOOD					
09 AGENCY INCOME			1,200,088		1,212,726
TOTAL					1,212,726
(CONT.)					

WITH THE APPROVAL OF THE GOVERNOR AND COUNCIL,  
THE SUPERVISOR OF THE SURPLUS FOOD  
SECTION IS AUTHORIZED TO TRANSFER PERSONNEL,

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01 GENERAL GOVERNMENT			(CONT.)		
04 DEPT ADMINISTRATIVE SERVICES			(CONT.)		
04 DIV. OF PLANT & PROPERTY MGMT.			(CONT.)		
02 BUREAU OF PURCHASE & PROPERTY			(CONT.)		
02 SURPLUS FOOD			(CONT.)		
<p>APPROPRIATIONS OR PORTIONS THEREOF, AS WELL AS EQUIPMENT, BETWEEN SUBDIVISIONS OF THE SECTION. TRANSFERS SHALL NOT PLACE AN UNWARRANTED DEMAND UPON THE BALANCE OF EITHER SURPLUS FOOD OR SURPLUS PROPERTY, AND THEY SHALL BE FREE TO UTILIZE SO MUCH AS MAY BE NECESSARY OF THE BALANCE ACCUMULATED AT JUNE 30, OR ANY SURPLUS ACCUMULATED DURING THE FISCAL YEAR WITHIN THE SURPLUS DISTRIBUTION SECTION, WITH THE APPROVAL OF THE FISCAL COMMITTEE AND THE GOVERNOR AND COUNCIL FOR AMOUNTS OVER \$5,000 AND, WITH THE APPROVAL OF THE GOVERNOR AND COUNCIL FOR AMOUNTS UNDER \$5,000 TO EFFICIENTLY OPERATE THIS SECTION WITHOUT THE USE OF ANY OTHER STATE FUNDS.</p>					
01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
04 DIV. OF PLANT & PROPERTY MGMT.					
02 BUREAU OF PURCHASE & PROPERTY					
03 SURPLUS PROPERTY					
10 PERSONAL SERVICES - PERMANENT			61,561	63,622	
18 OVERTIME			4,617	4,617	
20 CURRENT EXPENSES			18,813	18,813	
22 RENT&LEASES OTHER THAN STATE			1,200	1,200	
23 HEAT, ELECTRICITY & WATER			2,800	2,800	
24 MAINT. OTHER THAN BULD.& GRNDS			1,500	1,500	
26 ORGANIZATIONAL DUES			1,230	1,230	
40 INDEBT NEW/REPLACEMENT			53,500	53,500	
42 ADDITIONAL SERVICE BENEFITS			4,000	4,000	
50 PERSONAL SERVICE-TEMP/APPOINTE			3,232	3,232	
60 BENEFITS			17,536	17,536	
70 IN-STATE TRAVEL			25,828	26,590	
80 OUT-OF STATE TRAVEL			4,500	4,500	
90 SPECIAL PROGRAM TRANSPORTATION			200,000	200,000	
91 GRANTS (AUDITS)			2,000	2,000	
TOTAL			402,515	405,338	
ESTIMATED SOURCE OF FUNDS FOR					
SURPLUS PROPERTY					
04 AGENCY INCOME					
TOTAL			402,515	405,338	

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01 GENERAL GOVERNMENT								
04 DEPT ADMINISTRATIVE SERVICES								
04 DIV. OF PLANT & PROPERTY MGMT.								
02 BUREAU OF PURCHASE & PROPERTY								
03 SURPLUS PROPERTY								
<p>WITH THE APPROVAL OF THE GOVERNOR AND COUNCIL, THE SUPERVISOR OF THE SURPLUS DISTRIBUTION SECTION IS AUTHORIZED TO TRANSFER PERSONNEL, APPROPRIATIONS OR PORTIONS THEREOF, AS WELL AS EQUIPMENT, BETWEEN SUBDIVISIONS OF THE SECTION. SUCH TRANSFERS SHALL NOT PLACE AN UNWARRANTED BURDEN ON THE FUND BALANCE OF EITHER SURPLUS PROPERTY OR SURPLUS PROPERTY. ADDITIONAL FUNDS HEREBY GIVEN TO UTILIZE SO MUCH AS MAY BE NECESSARY OF THE BALANCE ACCUMULATED AT JUNE 30, OR ANY SURPLUS ACCUMULATING DURING THE FISCAL YEAR WITHIN THE SURPLUS DISTRIBUTION SECTION, WITH THE APPROVAL OF THE FISCAL COMMITTEE AND THE GOVERNOR AND COUNCIL FOR AMOUNTS OVER \$5,000 AND, WITH THE APPROVAL OF THE GOVERNOR AND COUNCIL FOR AMOUNTS UNDER \$5,000 TO EFFICIENTLY OPERATE THIS SECTION WITHOUT THE USE OF STATE FUNDS.</p>								
01 GENERAL GOVERNMENT								
04 DEPT ADMINISTRATIVE SERVICES								
04 DIV. OF PLANT & PROPERTY MGMT.								
02 BUREAU OF PURCHASE & PROPERTY								
04 TEMPORARY EMERGENCY FOOD ASSO								
20 CURRENT EXPENSES					10,149		10,149	
41 AUDIT FUND SET ASIDE				0	200		200	
90 CONTRACTED SERVICES					189,651		189,651	
TOTAL					200,000		200,000	
ESTIMATED SOURCE OF FUNDS FOR								
TEMPORARY EMERGENCY FOOD ASSO					200,000		200,000	
00 FEDERAL FUNDS					200,000		200,000	
101 TOTAL								
01 GENERAL GOVERNMENT								
04 DEPT ADMINISTRATIVE SERVICES								
04 DIV. OF PLANT & PROPERTY MGMT.								
02 BUREAU OF PURCHASE & PROPERTY								
05 STATE ADMINISTRATIVE EXPENSE								
20 CURRENT EXPENSES					69,897		69,896	
30 EQUIPMENT NEW/REPLACEMENT					53,000		53,500	
41 AUDIT FUND SET ASIDE				0	103		104	
TOTAL					103,000		103,500	
ESTIMATED SOURCE OF FUNDS FOR								
STATE ADMINISTRATIVE EXPENSE								





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01 GENERAL GOVERNMENT							
04 DEPT ADMINISTRATIVE SERVICES							
04 DIV. OF PLANT & PROPERTY MGMT.							
04 BUREAU OF GRAPHIC SERVICES							
02 PHOTOCOPY OPERATIONS							
10 PERSONAL SERVICES - PERMANENT							
20 CURRENT EXPENSES							
28 TRANSFERS TO GENERAL SERVICES							
42 ADDITIONAL FRINGE BENEFITS							
60 BENEFITS							
TOTAL				54,517		55,917	
				40,598		40,598	
				10,061		10,061	
				2,097		2,097	
				20,111		20,869	
TOTAL				127,318		129,362	
ESTIMATED SOURCE OF FUNDS FOR							
PHOTOCOPY OPERATIONS							
07 AGENCY INCOME							
TOTAL				127,318		129,362	
				127,318		129,362	
01 GENERAL GOVERNMENT							
04 DEPT ADMINISTRATIVE SERVICES							
04 DIV. OF PLANT & PROPERTY MGMT.							
04 BUREAU OF GRAPHIC SERVICES							
03 PRINT SHOP OPERATIONS							
10 PERSONAL SERVICES - PERMANENT							
18 OVERTIME							
20 CURRENT EXPENSES							
22 RENT/LEASES OTHER THAN STATE							
24 MAINT. OTHER THAN BUILD. & GRNDS							
26 ORGANIZATIONAL DUES							
28 TRANSFERS TO GENERAL SERVICES							
30 EQUIPMENT NEW/REPLACEMENT							
42 ADDITIONAL FRINGE BENEFITS							
50 PERSONAL SERVICE - TEMP/APPOINTE							
60 BENEFITS							
70 IN-STATE TRAVEL							
TOTAL				562,366		579,665	
				37,409		37,409	
				481,430		481,430	
				50,577		50,577	
				151,036		151,036	
				300		300	
				22,594		22,594	
				1,000		1,000	
				21,748		21,748	
				4,235		4,235	
				228,641		228,641	
				100		100	
TOTAL				1,555,035		1,578,735	
ESTIMATED SOURCE OF FUNDS FOR							
PRINT SHOP OPERATIONS							
09 AGENCY INCOME							
TOTAL				1,555,035		1,578,735	
				1,555,035		1,578,735	
01 GENERAL GOVERNMENT							
04 DEPT ADMINISTRATIVE SERVICES							
04 DIV. OF PLANT & PROPERTY MGMT.							
04 BUREAU OF GRAPHIC SERVICES							
04 WORKER'S COMPENSATION							
99 WORKERS COMPENSATION							
TOTAL				1,425		1,468	
ESTIMATED SOURCE OF FUNDS FOR							
WORKER'S COMPENSATION							
TOTAL				1,425		1,468	



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01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
04 DIV. OF PLANT & PROPERTY MGMT.					
05 BUREAU OF GENERAL SERVICES					
02 CENTRALIZED MAIL DISTRIBUTION					
50 PERSONAL SERVICE - TEMP/APPOINTEE					
60 BENEFITS	6,000			6,500	
70 IN-STATE TRAVEL	48,586			49,856	
80 OUT-OF STATE TRAVEL	1,000			1,000	
TOTAL	224,259			228,558	
ESTIMATED SOURCE OF FUNDS FOR					
CENTRALIZED MAIL DISTRIBUTION					
09 AGENCY INCOME	20,000			20,000	
GENERAL FUND	204,259			208,558	
TOTAL	224,259			228,558	
THE COMMISSIONER OF ADMINISTRATIVE SERVICES IS					
AUTHORIZED TO CHARGE CURRENT FIRST CLASS					
POSTAL RATES AGAINST DEPARTMENTAL OR					
INSTITUTIONAL APPROPRIATIONS, AND TO UTILIZE					
ANY COST-SAVINGS INCURRED THROUGH EFFICIENT					
OPERATIONS TO FUND THIS PAU.					
(CONT.)					
01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
04 DIV. OF PLANT & PROPERTY MGMT.					
05 BUREAU OF GENERAL SERVICES					
03 TELECOMMUNICATIONS					
10 PERSONAL SERVICES - PERMANENT					
18 OVERTIME	299,803			309,898	
20 CURRENT EXPENSES	1,500			1,500	
22 RENT/LEASES OTHER THAN STATE	35,938			36,068	
24 MAINT-OTHER THAN BULD.& GRNDS	2,270			2,279	
26 ORGANIZATIONAL DUES	22,929			12,929	
30 EQUIPMENT NEW/REPLACEMENT	1,500			1,500	
49 INTRAAGENCY TRANSFER	20,200			32,150	
51 CONSULTANTS-BENEFITED	333,887			341,740	
60 BENEFITS	1			1	
70 IN-STATE TRAVEL	111,482			115,217	
80 OUT-OF STATE TRAVEL	2,575			2,575	
90 STAFF DEVELOPMENT	2,595			2,595	
TOTAL	5,000			5,000	
ESTIMATED SOURCE OF FUNDS FOR					
TELECOMMUNICATIONS					
85 REVOLVING FUNDS					
TOTAL	839,679			863,652	
(CONT.)					
01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
04 DIV. OF PLANT & PROPERTY MGMT.					
05 BUREAU OF GENERAL SERVICES					
03 TELECOMMUNICATIONS					
10 PERSONAL SERVICES - PERMANENT					
18 OVERTIME	309,898			309,898	
20 CURRENT EXPENSES	1,500			1,500	
22 RENT/LEASES OTHER THAN STATE	36,068			36,068	
24 MAINT-OTHER THAN BULD.& GRNDS	2,279			2,279	
26 ORGANIZATIONAL DUES	12,929			12,929	
30 EQUIPMENT NEW/REPLACEMENT	1,500			1,500	
49 INTRAAGENCY TRANSFER	32,150			32,150	
51 CONSULTANTS-BENEFITED	341,740			341,740	
60 BENEFITS	1			1	
70 IN-STATE TRAVEL	115,217			115,217	
80 OUT-OF STATE TRAVEL	2,575			2,575	
90 STAFF DEVELOPMENT	2,595			2,595	
TOTAL	5,000			5,000	
ESTIMATED SOURCE OF FUNDS FOR					
TELECOMMUNICATIONS					
85 REVOLVING FUNDS					
TOTAL	839,679			863,652	
(CONT.)					
01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
04 DIV. OF PLANT & PROPERTY MGMT.					
05 BUREAU OF GENERAL SERVICES					
03 TELECOMMUNICATIONS					
10 PERSONAL SERVICES - PERMANENT					
18 OVERTIME	309,898			309,898	
20 CURRENT EXPENSES	1,500			1,500	
22 RENT/LEASES OTHER THAN STATE	36,068			36,068	
24 MAINT-OTHER THAN BULD.& GRNDS	2,279			2,279	
26 ORGANIZATIONAL DUES	12,929			12,929	
30 EQUIPMENT NEW/REPLACEMENT	1,500			1,500	
49 INTRAAGENCY TRANSFER	32,150			32,150	
51 CONSULTANTS-BENEFITED	341,740			341,740	
60 BENEFITS	1			1	
70 IN-STATE TRAVEL	115,217			115,217	
80 OUT-OF STATE TRAVEL	2,575			2,575	
90 STAFF DEVELOPMENT	2,595			2,595	
TOTAL	5,000			5,000	
ESTIMATED SOURCE OF FUNDS FOR					
TELECOMMUNICATIONS					
85 REVOLVING FUNDS					
TOTAL	839,679			863,652	
(CONT.)					
01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
04 DIV. OF PLANT & PROPERTY MGMT.					
05 BUREAU OF GENERAL SERVICES					
03 TELECOMMUNICATIONS					
10 PERSONAL SERVICES - PERMANENT					
18 OVERTIME	309,898			309,898	
20 CURRENT EXPENSES	1,500			1,500	
22 RENT/LEASES OTHER THAN STATE	36,068			36,068	
24 MAINT-OTHER THAN BULD.& GRNDS	2,279			2,279	
26 ORGANIZATIONAL DUES	12,929			12,929	
30 EQUIPMENT NEW/REPLACEMENT	1,500			1,500	
49 INTRAAGENCY TRANSFER	32,150			32,150	
51 CONSULTANTS-BENEFITED	341,740			341,740	
60 BENEFITS	1			1	
70 IN-STATE TRAVEL	115,217			115,217	
80 OUT-OF STATE TRAVEL	2,575			2,575	
90 STAFF DEVELOPMENT	2,595			2,595	
TOTAL	5,000			5,000	
ESTIMATED SOURCE OF FUNDS FOR					
TELECOMMUNICATIONS					
85 REVOLVING FUNDS					
TOTAL	839,679			863,652	

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01 GENERAL GOVERNMENT		(CONT.)	
04 DEPT ADMINISTRATIVE SERVICES		(CONT.)	
04 DIV. OF PLANT & PROPERTY MGMT.		(CONT.)	
05 BUREAU OF GENERAL SERVICES		(CONT.)	
05 TELECOMMUNICATIONS		(CONT.)	
<p>THE DIRECTOR OF PLANT AND PROPERTY MANAGEMENT IS AUTHORIZED TO ASSESS A FAIR AND EQUITABLE CHARGE WITH RESPECT TO TELECOMMUNICATION SERVICES, EQUIPMENT, SUPPLIES AND PUBLICATIONS. SUCH CHARGES TO BE MADE AGAINST DEPARTMENTAL OR INSTITUTIONAL APPROPRIATIONS UPON REQUISITION AND DELIVERY. FUNDS ARISING FROM SUCH CHARGES SHALL BE SEPARATELY ACCOUNTED FOR, AND SHALL BE USED DURING THE BIENNIUM TO FUND THIS ACCOUNT AND FOR SUCH OTHER PURPOSES AS MAY BE APPROVED BY THE GOVERNOR AND COUNCIL.</p>			
01 GENERAL GOVERNMENT			
04 DEPT ADMINISTRATIVE SERVICES			
04 DIV. OF PLANT & PROPERTY MGMT.			
05 BUREAU OF GENERAL SERVICES			
04 LEGISLATIVE OFFICE BLDG			
10 PERSONAL SERVICES - PERMANENT		80,575	82,592
20 CURRENT EXPENSES		10,764	10,464
22 RENT/LEASES OTHER THAN STATE		147,594	147,594
23 HEAT, ELECTRICITY & WATER		1,280	1,280
30 EQUIPMENT NEW/REPLACEMENT		40,427	41,887
50 PERSONAL SERVICE-TEMP/APPOINTEE		32,906	33,693
60 BENEFITS		16,465	20,465
91 BUILDING SECURITY/SAFETY		22,061	22,061
92 BUILDINGS & GROUNDS MAINT.			
TOTAL		351,772	359,886
ESTIMATED SOURCE OF FUNDS FOR			
LEGISLATIVE OFFICE BLDG			
GENERAL FUND		351,772	359,886
TOTAL		351,772	359,886
01 GENERAL GOVERNMENT			
04 DEPT ADMINISTRATIVE SERVICES			
04 DIV. OF PLANT & PROPERTY MGMT.			
05 BUREAU OF GENERAL SERVICES			
05 OLD HILL #1			
10 PERSONAL SERVICES - PERMANENT		55,108	55,814
18 OVERTIME		5,792	5,792
20 CURRENT EXPENSES		10,634	10,540
22 RENT/LEASES OTHER THAN STATE		350	350
23 HEAT, ELECTRICITY & WATER		51,555	51,554
30 EQUIPMENT NEW/REPLACEMENT		2,800	3,400
47 OWN FORCES MAINT.-BUILD.&GRNDS		3,500	3,500

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01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
04 DIV. OF PLANT & PROPERTY MGMT.					
05 BUREAU OF GENERAL SERVICES					
05 OLD MILL #1					
(CONT.)					
(CONT.)					
(CONT.)					
(CONT.)					
G					
48 CONTRACTUAL MAINT. - BUILD&GRNDS	35,000		35,000		
50 PERSONAL SERVICE-TEMP/APPOINTE	12,000		12,000		
60 BENEFITS	23,451		23,451		
91 BUILDING SECURITY/SAFETY	10,000		10,000		
92 BUILDINGS & GROUNDS MAINT.	12,900		12,900		
94 BUILDING USE ALLOWANCE	33,500		33,500		
TOTAL		256,590		258,063	
ESTIMATED SOURCE OF FUNDS FOR					
OLD MILL #1		256,590		258,063	
TOTAL		256,590		258,063	
I					
01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
04 DIV. OF PLANT & PROPERTY MGMT.					
05 BUREAU OF GENERAL SERVICES					
06 HEALTH & HUMAN SVCS BLDG					
10 PERSONAL SERVICES - PERMANENT					
18 OVERTIME	266,619		273,393		
20 CURRENT EXPENSES	21,100		21,100		
22 RENT&LEASES OTHER THAN STATE	62,701		62,701		
23 HEAT, ELECTRICITY & WATER	2,500		2,500		
30 EQUIPMENT NEW/REPLACEMENT	1,068,600		1,111,344		
47 OWN FORCES MAINT. - BUILD.&GRNDS	23,500		15,821		
48 CONTRACTUAL MAINT. - BUILD&GRNDS	100,000		100,000		
60 BENEFITS	100,656		108,962		
90 INTRATORIAL TRAVEL	1,200		1,200		
91 BUILDING SECURITY/SAFETY	241,025		241,025		
92 BUILDINGS & GROUNDS MAINT.	47,000		47,000		
94 BUILDING USE ALLOWANCE	158,097		158,097		
TOTAL	433,124	2,547,422		2,579,867	
ESTIMATED SOURCE OF FUNDS FOR					
HEALTH & HUMAN SVCS BLDG		2,547,422		2,579,867	
TOTAL		2,547,422		2,579,867	
I					

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01 GENERAL GOVERNMENT								
04 DEPT ADMINISTRATIVE SERVICES								
04 DIV. OF PLANT & PROPERTY MGMT.								
05 BUREAU OF GENERAL SERVICES								
07 BRIDGES HOUSE								
18 OVERTIME								
20	CURRENT EXPENSES			836			836	
23	HEAT, ELECTRICITY & WATER	D		3,000			3,000	
30	EQUIPMENT NEW/REPLACEMENT			3,854			4,104	
47	OWN FORCES MAINT.-BUILD.&GRNDS			1			1	
60	BENEFITS	G		18			18	
91	BUILDING SECURITY/SAFETY			309			309	
92	BUILDINGS & GROUNDS MAINT.			5,746			5,746	
				4,381			4,381	
TOTAL				18,145			18,395	
ESTIMATED SOURCE OF FUNDS FOR								
BRIDGES HOUSE								
GENERAL FUND								
TOTAL				18,145			18,395	
01 GENERAL GOVERNMENT								
04 DEPT ADMINISTRATIVE SERVICES								
04 DIV. OF PLANT & PROPERTY MGMT.								
05 BUREAU OF GENERAL SERVICES								
08 OLD LABOR BUILDING								
20 CURRENT EXPENSES								
23	HEAT, ELECTRICITY & WATER	D		1,500			1,500	
47	OWN FORCES MAINT.-BUILD.&GRNDS	G		17,524			18,224	
90	JANITORIAL SERVICES			772			772	
91	BUILDING SECURITY/SAFETY			15,825			16,250	
92	BUILDINGS & GROUNDS MAINT.			4,750			5,250	
				4,610			4,610	
TOTAL				64,981			66,606	
ESTIMATED SOURCE OF FUNDS FOR								
OLD LABOR BUILDING								
01 TRANSFERS FROM OTHER AGENCIES								
GENERAL FUND								
TOTAL				30,777			31,833	
				14,204			14,773	
				44,981			46,606	
01 GENERAL GOVERNMENT								
04 DEPT ADMINISTRATIVE SERVICES								
04 DIV. OF PLANT & PROPERTY MGMT.								
05 BUREAU OF GENERAL SERVICES								
09 SAFETY BUILDING								
10 PERSONAL SERVICES - PERMANENT								
18	OVERTIME			176,154			181,697	
20	CURRENT EXPENSES			6,900			6,900	
22	RENT/LEASES OTHER THAN STATE			27,300			27,300	
23	HEAT, ELECTRICITY & WATER	D		500			500	
24	MAINT.OTHER THAN BUILD. & GRNDS			432,662			449,968	
30	EQUIPMENT NEW/REPLACEMENT			200			200	
				13,150			12,256	

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01 GENERAL GOVERNMENT		(CONT.)			
04 DEPT ADMINISTRATIVE SERVICES		(CONT.)			
04 DIV. OF PLANT & PROPERTY MGMT.		(CONT.)			
05 BUREAU OF GENERAL SERVICES		(CONT.)			
09 SAFETY BUILDING		(CONT.)			
47 OWN FORCES MAINT.-BUILD.&GRNDS		G	6,000	6,000	
48 CONTRACTUAL MAINT.-BUILD&GRNDS		G	64,000	64,000	
50 PERSONAL SERVICE-TEMP/APPOINTE			84,920	84,920	
60 BENEFITS			74,226	76,277	
91 BUILDINGS SECURITY/SAFETY			36,000	36,000	
92 BUILDINGS & GROUNDS MAINT.			56,916	56,916	
TOTAL			978,928	1,002,934	
ESTIMATED SOURCE OF FUNDS FOR					
SAFETY BUILDING					
01 TRANSFERS FROM OTHER AGENCIES		I	978,928	1,002,934	
TOTAL			978,928	1,002,934	
01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
04 DIV. OF PLANT & PROPERTY MGMT.					
05 BUREAU OF GENERAL SERVICES					
10 HORTON BUILDING					
10 PERSONAL SERVICES - PERMANENT			143,724	147,636	
18 OVERTIME			5,000	5,000	
20 CURRENT EXPENSES			28,500	28,500	
22 RENTS&LEASES OTHER THAN STATE			480	480	
23 HEAT, ELECTRICITY & WATER		D	226,080	233,475	
30 EQUIPMENT NEW/REPLACEMENT			3,200	3,400	
47 OWN FORCES MAINT.-BUILD.&GRNDS		G	6,500	6,500	
48 CONTRACTUAL MAINT.-BUILD&GRNDS		G	34,000	34,000	
50 PERSONAL SERVICE-TEMP/APPOINTE			70,864	70,864	
60 BENEFITS			60,449	61,896	
91 BUILDINGS SECURITY/SAFETY			18,750	18,750	
92 BUILDINGS & GROUNDS MAINT.			57,525	57,526	
TOTAL			655,072	668,027	
ESTIMATED SOURCE OF FUNDS FOR					
HORTON BUILDING					
02 TRS FROM DEPT TRANSPORTATION			655,072	668,027	
TOTAL			655,072	668,027	
01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
04 DIV. OF PLANT & PROPERTY MGMT.					
05 BUREAU OF GENERAL SERVICES					
11 LONDERGAN HALL					
10 PERSONAL SERVICES - PERMANENT			31,901	32,607	
18 OVERTIME			1,045	1,045	
20 CURRENT EXPENSES			11,026	11,026	
22 RENTS&LEASES OTHER THAN STATE			480	480	

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<b>01 GENERAL GOVERNMENT</b>					
04 DEPT ADMINISTRATIVE SERVICES			(CONT.)		
04 DIV. OF PLANT & PROPERTY MGMT.			(CONT.)		
05 BUREAU OF GENERAL SERVICES			(CONT.)		
11 LONGERGAN HALL			(CONT.)		
23 HEAT, ELECTRICITY & WATER	D		103,229	103,228	
30 EQUIPMENT NEW/REPLACEMENT			1,075	1,500	
47 OWN FORCES MAINT. - BUILD.&GRNDS	G		7,500	7,500	
48 CONTRACTUAL MAINT. - BUILD.&GRNDS	G		50,000	50,000	
60 BENEFITS			12,190	12,452	
90 JANITORIAL SERVICES			47,000	47,000	
91 BUILDING SECURITY/SAFETY			7,750	7,750	
92 BUILDINGS & GROUNDS MAINT.			15,575	15,575	
94 BUILDINGS & GROUNDS			23,801	23,801	
TOTAL			312,572	312,764	
ESTIMATED SOURCE OF FUNDS FOR					
LONGERGAN HALL					
01 TRANSFERS FROM OTHER AGENCIES	I		312,572	312,764	
TOTAL			312,572	312,764	
<b>01 GENERAL GOVERNMENT</b>					
04 DEPT ADMINISTRATIVE SERVICES					
04 DIV. OF PLANT & PROPERTY MGMT.					
05 BUREAU OF GENERAL SERVICES					
12 JOHNSON HALL					
10 PERSONAL SERVICES - PERMANENT			24,244	24,736	
18 OVERTIME EXPENSES			1,045	1,045	
20 CURRENT ELECTRICITY & WATER	D		3,700	3,700	
23 HEAT, ELECTRICITY & WATER			48,153	69,742	
30 EQUIPMENT NEW/REPLACEMENT			7,400	5,280	
47 OWN FORCES MAINT. - BUILD. &GRNDS	G		55,500	7,500	
48 CONTRACTUAL MAINT. - BUILD&GRNDS	G		9,357	55,500	
60 BENEFITS			32,500	32,500	
90 JANITORIAL SERVICES			7,800	7,800	
91 BUILDING SECURITY/SAFETY			15,000	15,000	
92 BUILDINGS & GROUNDS MAINT.			9,115	9,115	
94 BUILDING USE ALLOWANCE					
TOTAL			240,814	240,957	
ESTIMATED SOURCE OF FUNDS FOR					
JOHNSON HALL					
01 TRANSFERS FROM OTHER AGENCIES	I		240,814	240,957	
TOTAL			240,814	240,957	



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01 GENERAL GOVERNMENT			
04 DEPT ADMINISTRATIVE SERVICES			
04 DIV. OF PLANT & PROPERTY MGMT.			
05 BUREAU OF GENERAL SERVICES			
13 UPHAM-WALKER HOUSE			
20 CURRENT EXPENSES		312	312
23 HEAT, ELECTRICITY & WATER		11,233	11,233
91 BUILDING SECURITY/SAFETY		3,500	3,500
TOTAL		15,045	15,045
ESTIMATED SOURCE OF FUNDS FOR			
UPHAM-WALKER HOUSE			
GENERAL FUND		15,045	15,045
TOTAL		15,045	15,045
01 GENERAL GOVERNMENT			
04 DEPT ADMINISTRATIVE SERVICES			
04 DIV. OF PLANT & PROPERTY MGMT.			
05 BUREAU OF GENERAL SERVICES			
14 SPAULDING HALL			
10 PERSONAL SERVICES - PERMANENT			
18 OVERTIME		41,207	42,125
20 CURRENT EXPENSES		1,250	1,250
23 HEAT, ELECTRICITY & WATER		4,000	4,000
30 EQUIPMENT NEW/REPLACEMENT		53,075	54,137
48 CONTRACTUAL MAINT.-BUILD&GRNDS		600	1,600
60 BENEFITS		20,600	20,000
90 JANITORIAL SERVICES		15,210	15,049
91 BUILDING SECURITY/SAFETY		33,408	33,408
92 BUILDINGS & GROUNDS MAINT.		11,200	11,200
TOTAL		12,500	12,500
ESTIMATED SOURCE OF FUNDS FOR		192,950	196,269
SPAULDING HALL			
01 TRANSFERS FROM OTHER AGENCIES		192,950	196,269
TOTAL		192,950	196,269
01 GENERAL GOVERNMENT			
04 DEPT ADMINISTRATIVE SERVICES			
04 DIV. OF PLANT & PROPERTY MGMT.			
05 BUREAU OF GENERAL SERVICES			
15 HILLS AVE. WAREHOUSE			
20 CURRENT EXPENSES		1,110	1,110
23 HEAT, ELECTRICITY & WATER		81,651	81,651
90 JANITORIAL SERVICES		14,700	14,700
91 BUILDING SECURITY/SAFETY		5,000	5,000
92 BUILDINGS & GROUNDS MAINT.		8,740	8,740
TOTAL		111,201	111,201
ESTIMATED SOURCE OF FUNDS FOR			
HILLS AVE. WAREHOUSE			



----- FISCAL YEAR 2004 -----			----- FISCAL YEAR 2005 -----		
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01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
04 DIV. OF PLANT & PROPERTY MGMT.					
05 BUREAU OF GENERAL SERVICES					
17 WORKER'S COMPENSATION					
99 WORKERS COMPENSATION					
TOTAL					
ESTIMATED SOURCE OF FUNDS FOR					
WORKER'S COMPENSATION					
GENERAL FUND					
TOTAL					
01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
04 DIV. OF PLANT & PROPERTY MGMT.					
05 BUREAU OF GENERAL SERVICES					
18 WALKER BUILDING					
10 PERSONAL SERVICES - PERMANENT					
18 OVERTIME					
20 CURRENT EXPENSES					
23 HEAT, ELECTRICITY & WATER					
30 EQUIPMENT REPLACEMENT					
47 CONTRACTUAL MAINT. - BUILDO&GRNDS					
47 CONTRACTUAL MAINT. - BUILDO&GRNDS					
50 PERSONAL SERVICE-TEMP/APPOINTE					
60 BENEFITS					
70 IN-STATE TRAVEL					
91 BUILDING MAINT & OPERATION					
92 BUILDING & GROUNDS MAINTENANCE					
94 BUILDING USE ALLOWANCE					
TOTAL					
ESTIMATED SOURCE OF FUNDS FOR					
WALKER BUILDING					
01 TRANSFERS FROM OTHER AGENCIES					
TOTAL					
01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
04 DIV. OF PLANT & PROPERTY MGMT.					
05 BUREAU OF GENERAL SERVICES					
19 REVENUE BLDG 61 SO SPRING					
10 PERSONAL SERVICES - PERMANENT					
18 OVERTIME					
20 CURRENT EXPENSES					
22 RENTSALEASES OTHER THAN STATE					
23 HEAT, ELECTRICITY & WATER					
30 EQUIPMENT NEWREPLACEMENT					
47 ONN FORCES MAINT.-BUILDO&GRNDS					
48 CONTRACTUAL MAINT.-BUILDO&GRNDS					
TOTAL					
ESTIMATED SOURCE OF FUNDS FOR					
WALKER BUILDING					
01 TRANSFERS FROM OTHER AGENCIES					
TOTAL					

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01 GENERAL GOVERNMENT  
04 DEPT ADMINISTRATIVE SERVICES  
04 DIV. OF PLANT & PROPERTY MGMT.  
05 BUREAU OF GENERAL SERVICES  
19 REVENUE BLDG 61 SD SPRING

60 BENEFITS  
70 IN-STATE TRAVEL  
90 JANITORIAL SERVICES  
91 BUILDING SECURITY/SAFETY  
92 BUILDINGS AND GROUNDS MAINT  
94 BUILDING USE ALLOWANCE

TOTAL	100
ESTIMATED SOURCE OF FUNDS FOR	
REVENUE BLDG 61 SO SPRING	100
01 TRANSFERS FROM OTHER AGENCIES	
TOTAL	100

01 GENERAL GOVERNMENT  
04 DEPT ADMINISTRATIVE SERVICES  
04 DIV. OF PLANT & PROPERTY MGMT.  
05 BUREAU OF GENERAL SERVICES  
20 DMV TESTING FACILITY

10 PERSONAL SERVICES - PERMANENT  
18 OVERTIME  
20 CURRENT EXPENSES  
23 HEAT, ELECTRICITY & WATER  
24 MAINT. OTHER THAN BLDG. & GRNDS  
30 EQUIPMENT NEW/REPLACEMENT  
37 DMN FORCES MAINT. - BLDG. & GRNDS  
50 PERSONAL SERVICE-TEMP/APPOINTEE  
60 BENEFITS  
91 BUILDING SECURITY/SAFETY  
92 BUILDINGS & GROUNDS MAINT.

TOTAL	ESTIMATED SOURCE OF FUNDS FOR
	DNV TESTING FACILITY
01	TRANSFERS FROM OTHER AGENCIES
TOTAL	

TOTAL  
ESTIMATED SOURCE OF FUNDS FOR  
DIV. OF PLANT & PROPERTY MGMT.  
FEDERAL FUNDS  
GENERAL FUND  
OTHER FUNDS  
TOTAL

(CONT.)  
(CONT.)  
(CONT.)  
(CONT.)  
(CONT.)

9,693  
250  
32,000  
22,000  
28,000  
50,000

265,754  
265,754  
265,754

267,744  
267,744  
267,744

20,301	19,383
500	9,179
2,900	3,100
48,541	31,100
500	
7,950	

143,454  
143,454  
143,454

168,643  
168,643  
168,643

14,945,492  
303,000  
4,254,773  
10,387,719  
14,945,492

16,331,474  
303,500  
4,325,340  
11,702,634  
16,331,474

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01 GENERAL GOVERNMENT  
 04 DEPT ADMINISTRATIVE SERVICES  
 05 DIV OF INFO TECHNOLOGY MGMT  
 01 INFORMATION TECHNOLOGY MGMT

10 PERSONAL SERVICES - PERMANENT  
 12 PERSONAL SERVICES-UNCLASSIFIED  
 20 CURRENT EXPENSES  
 24 OTHER THAN BUILD. & GRNDS  
 26 ORGANIZATIONAL DUES  
 28 TRANSFERS TO GENERAL SERVICES  
 60 BENEFITS  
 70 IN-STATE TRAVEL  
 90 STAFF DEVELOPMENT

TOTAL  
 ESTIMATED SOURCE OF FUNDS FOR  
 INFORMATION TECHNOLOGY MGMT  
 GENERAL FUND  
 TOTAL

452,694  
 85,232  
 7,484  
 500  
 9,050  
 17,068  
 199,033  
 100  
 1,600

772,761

795,669

772,761  
772,761795,669  
795,669

THE COMMISSIONER OF ADMINISTRATIVE SERVICES IS  
 AUTHORIZED TO ASSESS A FAIR AND EQUITABLE  
 CHARGE WITH RESPECT TO E-BUSINESS SERVICES,  
 EQUIPMENT, SUPPLIES, AND PUBLICATIONS, SUCH  
 CHARGES TO BE MADE AGAINST DEPARTMENTAL OR  
 INSTITUTIONAL APPROPRIATIONS UPON REQUEST FOR  
 AND DELIVERY. FUNDS ARISING FROM SUCH CHARGES  
 SHALL BE SEPARATELY ACCOUNTED FOR, AND SHALL BE  
 USED DURING THE FISCAL YEAR TO FUND THIS ACCOUNT  
 AND FOR SUCH OTHER PURPOSES AS MAY BE APPROVED  
 BY THE GOVERNOR AND COUNCIL.

TOTAL  
 ESTIMATED SOURCE OF FUNDS FOR  
 DIV OF INFO TECHNOLOGY MGMT  
 GENERAL FUND  
 TOTAL

772,761

795,669

772,761  
772,761795,669  
795,669



----- FISCAL YEAR 2004 -----			----- FISCAL YEAR 2005 -----		
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01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
06 FINANCIAL DATA MANAGEMENT					
02 ADMIN SVCE DATA CENTER					
D					
10 PERSONAL SERVICES - PERMANENT					
18 OVERTIME					
20 CURRENT EXPENSES					
22 RENTS&LEASES OTHER THAN STATE					
24 MAINT.OTHER THAN BUILD.& GRNDS					
28 TRANSFERS TO GENERAL SERVICES					
50 BENEFITS					
60 IN-STATE TRAVEL					
70 OUT-STATE TRAVEL					
90 MAINTENANCE EXPENDABLES					
91 REPORT PRODUCTION/DISTRIBUTION					
94 HARDWARE MAINTENANCE					
95 IBM SOFTWARE					
96 THIRD PARTY HARDWARE/SOFTWARE					
98 TECHNICAL SUPPORT CONTRACTS					
99 E-GOV SUPPORT					
TOTAL					
ESTIMATED SOURCE OF FUNDS FOR					
ADMIN SVCE DATA CENTER					
01 TRANSFERS FROM OTHER AGENCIES					
GENERAL FUND					
TOTAL					
01 GENERAL GOVERNMENT					
04 DEPT ADMINISTRATIVE SERVICES					
06 FINANCIAL DATA MANAGEMENT					
03 WORKER'S COMPENSATION					
D					
99 WORKER'S COM					
TOTAL					
ESTIMATED SOURCE OF FUNDS FOR					
WORKER'S COMPENSATION					
GENERAL FUND					
TOTAL					
TOTAL					
ESTIMATED SOURCE OF FUNDS FOR					
FINANCIAL DATA MANAGEMENT					
GENERAL FUND					
OTHER FUNDS					
TOTAL					
559,116					
22,000					
18,000					
539					
3,530					
109,793					
214,273					
1,000					
80,219					
157,238					
1,187,600					
1,105,001					
2,000,000					
25,701					
6,042,200					
5,890,770					
5,132,350					
909,850					
6,042,200					
2,000					
2,000					
2,000					
9,499,390					
4,033,153					
5,466,237					
9,499,390					
9,214,072					
3,899,982					
5,314,090					
9,214,072					

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01 GENERAL GOVERNMENT  
04 DEPT ADMINISTRATIVE SERVICES  
07 COURT FACILITIES

10 PERSONAL SERVICES - PERMANENT			
11 SALARY OF EXEC DIRECTOR	831,516		855,592
18 OVERTIME	31,500		31,500
20 CURRENT EXPENSES			
22 RENT&LEASES OTHER THAN STATE	380,926		381,426
23 HEAT, ELECTRICITY & WATER	2,997,273		2,997,273
24 MAINT, OTHER THAN BUILD. & GRNDS	1,407,871		1,546,658
30 EQUIPMENT NEW/REPLACEMENT	50,000		50,000
47 OWN FORCES MAINT.-BUILD.&GRNDS	14,320		14,320
48 CONTRACTUAL MAINT.-BUILD.&GRNDS	124,000		124,000
50 PERSONAL SERVICE-TEMP/APPOINTEE	350,000		350,000
60 BENEFITS	346,091		346,091
70 IN-STATE TRAVEL	10,000		10,000
90 JANITORIAL SERVICES	22,000		22,000
91 BUILDING SECURITY/SAFETY	155,950		155,950
92 SHERIFF & GROUND MAINT.	327,619		336,160
93 SHERIFF & GROUND MAINT. REIMBURSEMENT	925,000		925,000
94 LEASE PURCHASES-COURT BUILDING	575,000		575,000
99 RELOCATION	25,000		7,500
TOTAL	8,594,066		8,759,378
ESTIMATED SOURCE OF FUNDS FOR			
COURT FACILITIES			
01 TRANSFERS FROM OTHER AGENCIES	7,428,765		7,567,776
09 AGENCY INCOME	266,605		266,605
GENERAL FUND	898,696		924,997
TOTAL	8,594,066		8,759,378
01 GENERAL GOVERNMENT			
04 DEPT ADMINISTRATIVE SERVICES			
09 BUR OF EMERGENCY COMMUNICATION			
10 PERSONAL SERVICES - PERMANENT			
11 SALARY OF EXEC DIRECTOR	3,091,696		3,202,358
18 OVERTIME	71,683		71,683
19 HOLIDAY PAY	190,753		190,753
20 CURRENT EXPENSES			
22 RENT&LEASES OTHER THAN STATE	70,324		70,324
23 HEAT, ELECTRICITY & WATER	322,513		322,513
24 MAINT, OTHER THAN BUILD. & GRNDS	11,433		11,433
30 ORGANIZATIONAL DUES	27,500		27,500
36 TRANSFERS TO GENERAL SERVICES	30,000		30,000
38 EQUIPMENT NEW/REPLACEMENT	2,117		2,117
40 INDIFFERENT COSTS	23,201		23,770
42 ADDITIONAL FRINGE BENEFITS	140,000		160,000
44 CONSULTANTS	120,000		120,000
47 OWN FORCES MAINT.-BUILD.&GRNDS	154,857		154,857
	17,000		17,000
	2,500		2,500



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(CONT.)			
01 GENERAL GOVERNMENT			
04 DEPT ADMINISTRATIVE SERVICES			
09 BUR OF EMERGENCY COMMUNICATION			
(CONT.)			
D			
49 TRANSFERS TO OTHER STATE AGENCIES	2,500	2,500	2,500
50 PERSONAL SERVICE-TEMP/APPOINTEE	147,969	147,969	150,804
59 PART-TIME - BENEFITTED	529,511	529,511	551,463
60 BENEFITS	1,474,289	1,474,289	1,523,586
70 IN-STATE TRAVEL	27,500	27,500	27,500
80 OUT-OF-STATE TRAVEL	75,100	75,100	75,100
91 PUBLIC RELATIONS	25,100	25,100	25,100
92 SYSTEMS & ALL	75,000	75,000	100,000
93 SYSTEM DEVELOPMENT	100,000	100,000	200,000
94 NETWORK & DATABASE MNT	200,000	200,000	700,000
95 TRAINING	700,000	700,000	700,000
TOTAL	55,400	55,400	55,400
	7,612,866	7,612,866	7,818,204
I			
ESTIMATED SOURCE OF FUNDS FOR			
BUR OF EMERGENCY COMMUNICATION			
09 AGENCY INCOME			
TOTAL			
SUNS APPROPRIATED SHALL NOT BE USED FOR THE			
PURCHASE OF UNIFORMS OR SUCH SIMILAR WEAR			
OR FASHION.			
PURSUANT TO RSA 9:4-B, THE DEPARTMENT SHALL			
WORK COOPERATIVELY WITH, AND SUBMIT A PLAN			
TO THE DIRECTOR OF INFORMATION TECHNOLOGY			
MANAGEMENT.			
01 GENERAL GOVERNMENT			
04 DEPT ADMINISTRATIVE SERVICES			
10 JUDICIAL CONDUCT COMMISSION			
20 CURRENT EXPENSES			
22 RENTALS OTHER THAN STATE			
50 PERSONNEL NEW/REPLACEMENT			
50 PERSONAL SERVICE TEMP/APPOINT			
59 PART-TIME - BENEFITTED			
60 BENEFITS			
70 IN-STATE TRAVEL			
80 OUT-OF-STATE TRAVEL			
90 CONSULTANTS			
TOTAL			
	13,600	13,600	13,600
	22,200	22,200	24,600
	4,500	4,500	3,500
	25,000	25,000	25,000
	35,000	35,000	40,778
	16,378	16,378	17,001
	6,000	6,000	6,000
	2,000	2,000	2,000
	56,400	56,400	56,400
	185,172	185,172	188,879

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01 GENERAL GOVERNMENT				(CONT.)		
06 DEPT ADMINISTRATIVE SERVICES				(CONT.)		
10 JUDICIAL CONDUCT COMMISSION				(CONT.)		
ESTIMATED SOURCE OF FUNDS FOR						
JUDICIAL CONDUCT COMMISSION						
GENERAL FUND				185,172	188,879	
TOTAL				185,172	188,879	
TOTAL				46,967,453	48,737,255	
ESTIMATED SOURCE OF FUNDS FOR						
DEPT ADMINISTRATIVE SERVICES						
GENERAL FUND				303,000	303,500	
OTHER FUNDS				15,595,925	15,657,948	
TOTAL				31,268,528	32,775,807	
TOTAL				46,967,453	48,737,255	
01 GENERAL GOVERNMENT						
05 DEPARTMENT OF STATE						
01 ADMINISTRATION						
10 PERSONAL SERVICES - PERMANENT				229,152	235,954	
11 SALARY - SECRETARY OF STATE				89,928	89,928	
12 SALARY - DEPUTY SECRETARIES				103,998	103,998	
13 SALARY - ASSISTANT SECRETARIES				109,609	129,692	
20 CURRENT EXPENSES				31,800	31,800	
24 MAINT OTHER THAN BUILD & GRNDS				9,000	9,000	
30 EQUIPMENT NEW/REPLACEMENT				1,000	1,000	
60 BENEFITS				197,154	206,967	
70 IN-STATE TRAVEL				150	150	
80 OUT-OF STATE TRAVEL				975	975	
TOTAL				772,631	809,264	
ESTIMATED SOURCE OF FUNDS FOR						
ADMINISTRATION						
01 TRANSFERS FROM OTHER AGENCIES				39,620	18,578	
GENERAL FUND				732,611	790,686	
TOTAL				772,631	809,264	







